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# federal register

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Thursday  
July 16, 1992

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Pages 31429-31628

# federal register

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

- WHEN:** July 22, at 9:00 am  
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
- RESERVATIONS:** Federal Information Center, 1-800-726-4995

### SEATTLE, WA

- WHEN:** July 23, at 1:00 pm  
**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
- RESERVATIONS:** Federal Information Center, 1-800-726-4995

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 92-066-1]

#### Tuberculosis in Cattle and Bison; State Designations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by lowering the designation of New York from an accredited-free State to a modified accredited State. We have determined that New York no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited State. This change is necessary to prevent the spread of tuberculosis in cattle and bison.

**DATES:** Interim rule effective July 16, 1992. Consideration will be given only to comments received on or before September 14, 1992.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782. Please state that your comments refer to Docket No. 92-066-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Stenseng, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505

Belcrest Road, Hyattsville, MD 20782; 301-436-8715.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *mycobacterium bovis*. The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference.

An accredited-free State, as defined in § 77.1 of the regulations, is a State that has had no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. If tuberculosis is detected in any cattle or bison in the State, the State's accredited-free status is suspended; detection of tuberculosis in two or more herds in the State within 48 months will result in the revocation of the State's accredited-free status.

Before publication of the interim rule, New York was designated in § 77.1 of the regulations as an accredited-free State. However, because tuberculosis has recently been confirmed in two herds within the State, the Administrator has determined that New York no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for

designation as a modified accredited State. Therefore, we are amending the regulations by removing New York from the list of accredited-free States in § 77.1 and adding it to the list of modified accredited States in that section.

##### Miscellaneous

We are also amending § 77.1 of the regulations by revising the footnote to the definition for "Uniform Methods and Rules—Bovine Tuberculosis Eradication" to reflect the current APHIS organization.

In addition to the changes set forth above, we are correcting two typographical errors in the regulations.

##### Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of New York as a modified accredited State. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

Because prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the Federal Register. We will consider comments that are received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

##### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

New York has approximately 21,500 herds containing 1,555,000 cattle and bison. The marketability of cattle and bison from New York may be affected by this change in the State's status because some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. However, it has been our experience that lowering a State's designation from accredited-free to modified accredited status does not significantly affect interstate sales of cattle and bison. Consequently, we have determined that this action will not have a significant effect on marketing patterns in New York and will, therefore, not have a significant effect on those persons affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

#### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

### PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

#### § 77.1 [Amended]

2. In § 77.1, the definition for "Accredited-free state," paragraph (1)(i), first sentence, the word "or" immediately before the word "tuberculosis" is removed and the word "of" is added in its place.

3. In § 77.1, the definition for "Accredited-free state," paragraph (2) is amended by removing "New York,".

4. In § 77.1, the definition for "Modified accredited state," paragraph (2) is amended by adding "New York," immediately before "North Carolina,".

5. In § 77.1, the definition for "Person," the term "com-pany," is corrected to read "company,".

6. In § 77.1, the definition for "Uniform Methods and Rules—Bovine Tuberculosis Eradication," footnote 1 is revised to read as follows:

<sup>1</sup> Copies may be obtained from the Administrator, c/o Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 10th day of July 1992.

Robert Melland,  
Administrator, Animal and Plant Health  
Inspection Service.  
[FR Doc. 92-16673 Filed 7-15-92; 8:45 am]  
BILLING CODE 3410-34-M

### 9 CFR Part 78

[Docket No. 92-104-1]

#### Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class B to Class A. We have determined that Louisiana now meets the standards for Class A status. This action relieves certain restrictions on the interstate movement of cattle from Louisiana.

DATES: Interim rule effective July 10, 1992. Consideration will be given only to

comments received on or before September 14, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 92-104-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4918.

#### SUPPLEMENTARY INFORMATION:

##### Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughter establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds,

participation of all slaughtering establishment in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the effective date of this interim rule, Louisiana was classified as a Class B State because of its herd infection rate and its MCI reactor prevalence rate.

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus*, of 0.25 percent, or 2.5 herds per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) maintain for 12 consecutive months an MCI reactor prevalence rate not to exceed 0.10 percent, or one reactor per 1,000 cattle tested; (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd; and (4) maintain the specified surveillance system.

After reviewing its brucellosis program records, we have concluded that the State of Louisiana meets the standards for Class A status. Therefore, we are removing Louisiana from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b). This action relieves certain restrictions on moving cattle interstate from Louisiana.

#### Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Louisiana.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*. It will include discussion of any comments we

receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Louisiana from Class B to Class A will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from Louisiana. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

There are approximately 21,500 cattle herds in Louisiana that could potentially be affected by this rule change. We estimate that 98 percent of these herds are owned by small entities. If the total cost of testing were distributed equally among all herds in Louisiana, this change in classification would save less than \$18 per herd. Therefore, we believe that changing Louisiana's brucellosis status will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

#### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 78

Animal diseases, Bison Brucellosis, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

#### PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

#### § 78.41 [Amended]

2. Paragraph (b) § 78.41 is amended by adding "Louisiana," immediately after "Kentucky,".

3. Paragraph (c) of § 78.41 is amended by removing "Louisiana,".

Done in Washington, DC, this 10th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–16672 Filed 7–15–92; 8:45 am]

BILLING CODE 3410–34–M

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 91–ASW–19; Amendment 39–8231; AD 92–09–06]

**Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214B and 214B–1 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is

applicable to Bell Model 214B and 214B-1 helicopters. This action establishes a mandatory retirement life for the main transmission upper planetary carrier and requires the use of special life reduction factors for operators using these aircraft for external load operations. This amendment is prompted by retesting and analysis by the manufacturer. The actions specified in this AD are intended to prevent fatigue failure of the upper planetary carrier which, in turn, could result in failure of the main transmission and loss of the helicopter.

**DATES:** Effective August 13, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1992.

Comments for inclusion in the Rules Docket must be received August 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-19, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott A. Horn, FAA, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5177; fax (817) 740-3394.

**SUPPLEMENTARY INFORMATION:** Bell Helicopter Textron has recently completed additional testing and analysis on the retirement life of the main transmission upper planetary carrier (upper planetary carrier) installed in Bell Model 214B and 214B-1 helicopters. As a result, a 17,000 hour mandatory (fatigue) retirement life on the main transmission upper planetary carrier is being established. The tests and analysis revealed that this component is sensitive to power change events. The power change events of concern are those associated with ground-air-ground (GAG) cycles, repeated heavy lift (RHL) cycles, or similar operations involving a number of high power changes. Examples of RHL power change events are water dropping from buckets or belly tanks (fire

fighting), tree logging, spraying, or other operations where external cargo is transferred at a high number of events per flight hour. Since the 17,000 hour mandatory retirement life is based on operations that result in up to four GAG cycles per hour, those helicopters performing high frequency RHL operations must adjust the actual upper planetary carrier time in service by factoring this time to obtain an equivalent time in service. The establishment of a mandatory retirement life is needed to prevent fatigue cracks, and possible failure of the upper planetary carrier, which could result in the loss of the helicopter.

Since this condition described is likely to exist or develop on other helicopters of the same type design, this AD is being issued to prevent possible fatigue failure of the upper planetary carrier, which could result in failure of the main transmission. This AD establishes a 17,000 hour mandatory retirement life on the upper planetary carrier and requires factoring the actual upper planetary carrier time in service to obtain reduced equivalent time in service when performing RHL operations. The inspections and replacements required are to be accomplished in accordance with the service bulletin described in this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, for examination by interested persons. A report summarizing each FAA-public contact, concerned with substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-19." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**AD 92-09-06 Bell Helicopter Textron, Inc. (BHTI):** Amendment 39-8231. Docket No. 91-ASW-19.

**Applicability:** All Model 214B and 214B-1 helicopters, certificated in any category.

**Compliance:** Required as indicated, unless already accomplished.

To prevent possible fatigue failure of the upper planetary carrier, part number (P/N) 214-040-077-007 and -101, which could result in failure of the transmission and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, accomplish the following:

(1) Create a component history card for the upper planetary carrier, P/N's 214-040-077-007 and -101.

(2) Determine the equivalent service life of the upper planetary carrier in accordance with BHTI Alert Service Bulletin 214-91-45, dated August 1, 1991.

(3) Determine if a magnetic particle inspection (MPI) has been performed on the upper planetary carrier and the number of hours' time in service since the last inspection.

(4) If there is no record of an MPI on the upper planetary carrier, or, if more than 2,500 hours' time in service has elapsed since the last inspection, remove and inspect the carrier for cracks using an MPI or equivalent method before further flight.

(5) Replace any cracked upper planetary carrier before further flight.

(b) Thereafter, conduct the MPI at intervals not to exceed 2,500 hours' time in service from the last inspection until an equivalent service life of 17,000 hours' time in service is reached.

(c) Replace all upper planetary carriers at or before attaining an equivalent service life of 17,000 hours' time in service.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Manager, Rotorcraft Certification Office.

(f) The inspections and replacements required by this AD shall be done in accordance with Bell Helicopter Textron, Inc., Alert Service Bulletin 214-91-45, dated August 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, attention: Customer Support. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on August 13, 1992.

Issued in Fort Worth, Texas, on April 6, 1992.

**Henry A. Armstrong,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92-16754 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 92-NM-29-AD; Amendment 39-8289; AD 92-14-07]

**Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6-80C2 Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for damage to the engine fire extinguishing tubes located in the number two and number three engine struts, and replacement or repair, if necessary, of the tubes and/or tube support clamps, and reorienting the clamp. This amendment will expand the number of effected airplanes and require a modification that will constitute terminating action for the currently required inspections. This amendment is prompted by multiple reports of support clamps in the number two and three engine struts chafing a hole in the engine fire extinguishing tubes. The actions specified by this AD are intended to prevent inadequate fire extinguishing agent concentration levels within the engine fire zone following engine fire system discharge.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Michael Collins, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2689; fax (206) 227-1181. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-08-06, Amendment 39-8960 (56 FR 14303, April 9, 1991), which is applicable to Model 747 series airplanes, was published in the *Federal Register* on March 25, 1992 (57 FR 10301). The action proposed to expand the number of affected airplanes and require a modification that will constitute terminating action for the currently required inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 69 Boeing Model 747 series airplanes of the affected design in the worldwide fleet, including 16 additional airplanes included in this required AD action. Currently, there are no Model 747 series airplanes of the affected design on the U.S. registry. However, should an affected airplane be placed on the U.S. Register in the future, the FAA estimates that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate would be \$55 per work hour. Required parts are available from the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD is estimated to be \$1,320 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6960 (56 FR 14303, April 9, 1991), and by adding a new airworthiness directive (AD), amendment 39-8289, to read as follows:

92-14-07. Boeing: Amendment 39-8289.

Docket 92-NM-29-AD. Supersedes AD 91-08-06, Amendment 39-6960.

**Applicability:** Model 747 series airplanes equipped with General Electric CF6-80C2 engines; as listed in Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991, and Revision 2, dated December 18, 1991; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent inadequate fire extinguishing agent concentration levels within the engine fire zone following engine fire system discharge, accomplish the following:

(a) For airplanes listed in Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991: Within 10 days after April 19, 1991 (the effective date of AD 91-08-06, Amendment 39-6960), accomplish the procedures specified in subparagraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with that service bulletin; or Revision 1, dated August 26, 1991; or Revision 2, dated December 18, 1991.

(1) Visually inspect the engine number two and number three fire extinguishing tubes and specified tube clamps within the engine strut.

(2) If damage is detected, prior to further flight, replace or repair the damaged engine fire extinguishing tubes, as applicable, in accordance with Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991; or Revision 1, dated August 26, 1991; or Revision 2, dated December 18, 1991. (The service bulletins specify three repair procedures, depending upon the amount of chafing damage to the tube.)

(3) Remove the specified tube clamp from the fixed strut structure (the clamp should remain attached to the tube), and reinstall the tube clamp to orient the legs away from any structure.

(b) For airplanes listed in Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991, and not subject to paragraph (a) of this AD: Within 20 days after the effective date of this AD, accomplish the procedures specified in subparagraphs (b)(1), (b)(2), and (b)(3) of this AD in accordance with "Part I—Inspection" of that service bulletin.

(1) Visually inspect the engine number two and number three fire extinguishing tubes and specified tube clamps within the engine strut.

(2) If damage is detected, prior to further flight, replace or repair the damaged engine fire extinguishing tubes, as applicable, in accordance with the Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991. (The service bulletin specifies three repair procedures, depending upon the amount of chafing damage to the tube.)

(3) Remove the specified tube clamp from the fixed strut structure (the clamp should remain attached to the tube), and reinstall the tube clamp to orient the legs away from any structure.

(c) Repeat the inspection required by paragraph (a) or (b) of this AD at the interval specified in subparagraph (c)(1) or (c)(2) below, as applicable:

(1) For airplanes that have not used the extinguishing tube patch repair procedures to repair the tube in accordance with paragraph (a) or (b) of this AD: Repeat the inspection at intervals not to exceed 100 flight cycles or 400 hours time-in-service, whichever occurs first.

(2) For airplanes that have used the extinguishing tube patch repair procedures to repair the tube in accordance with paragraphs (a) or (b) of this AD: Repeat the inspection at intervals not to exceed 50 flight cycles or 175 hours time-in-service, whichever occurs first.

(d) For airplanes listed in Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991: Within 6 months

after the effective date of this AD, accomplish the modification specified in "Part II—Terminating Action" of the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraphs (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, repairs, replacement, and modification shall be done in accordance with Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991 (the date of this document appears only on page 1 of the document); or Boeing Alert Service Bulletin 747-26A2179, Revision 1, dated August 26, 1991 (the revision level and date of this document appear only on page 1 of the document); or Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.  
[FR Doc. 92-16751 Filed 7-15-92; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 91-NM-275-AD; Amendment 39-8297; AD 92-15-04]

#### Airworthiness Directives; British Aerospace Model 125-800A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model 125-800A series airplanes, that requires a modification of the main landing gear assembly, which consists of installing steel torque links and reducing axial clearances at torque link pins and knuckle joints. This amendment is prompted by recent reports of main landing gear vibration due to lack of stiffness in the caster mode. The actions specified by this AD are intended to prevent excessive wear and premature structural failure of the main landing gear.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC 20041-0414.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model 125-800A series airplanes was published in the *Federal Register* on January 23, 1992 (57 FR 2697). That action proposed to require a modification of the main landing gear assembly, which consists of installing steel torque links and reducing axial clearances at torque link pins and knuckle joints.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter considers that the proposed AD action is not warranted because the unsafe condition (main landing gear vibration) affects a relatively small number of airplanes, and the cause of the vibration has not yet been specifically identified. The

commenter states that other operators have indicated that two airplanes, on which the proposed modification has already been installed, still experience main landing gear vibration. The commenter has accomplished the procedures described in six service bulletins issued by the manufacturer since December 1989 that relate to main landing gear issues, and has complied with one AD addressing main landing gear problems; however, the commenter's airplane has not yet experienced any main landing gear vibration. In addition, the commenter states that its airplane has accumulated less than 1,000 cycles, and suggests that the applicability of the proposed rule be changed to include variables, such as number of accumulated cycles, serial numbers, and operating conditions of the affected airplanes. The FAA does not concur. Available data have shown that the reason for the vibration occurrences is a lack of sufficient torsional stiffness in the main landing gear. Since all affected airplanes have nearly the same torsional stiffness of the main landing gear and the occurrence of vibrations is only somewhat effected by piloting technique, it is reasonable to assume that the vibrations may occur eventually on all affected airplanes. Installation of the steel torque links and reduction of the lateral free play in the torque link installation increases the needed torsional stiffness in the main landing gear. Although the increase may not be sufficient to eliminate main gear vibrations in all cases, installation of the steel torque links and reduction of torque link lateral free play has resulted in an immediate and significant improvement on airplanes currently experiencing the problem.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is

estimated to be \$128,095 or \$935 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-15-04. British Aerospace: Amendment 39-8297. Docket 91-NM-275-AD.

*Applicability:* Model 125-800A series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent excessive wear and premature structural failure of the main landing gear, accomplish the following:

(a) Within 180 days after the effective date of this AD, install steel torque links on the right and left main landing gear, and reduce

torque link and knuckle axial clearances, by installing British Aerospace Modification Number 253257SA in accordance with British Aerospace Service Bulletin SB.32-226-3257A, dated May 3, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation and modification shall be done in accordance with British Aerospace Service Bulletin SB.32-226-3257A, dated May 3, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-16753 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 92-NM-24-AD; Amendment 39-8288; AD 92-14-06]

#### Airworthiness Directives; British Aerospace Model Viscount 810 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Viscount 810 series airplanes, that requires inspections of the lower skin panels of the elevator for skin quilting, corrosion, and delamination, and replacement, if necessary;

application of water displacement fluid and anti-corrosion protective treatment to inner surfaces of the elevator lower skins; and rebalancing of the left and right elevators. This amendment is prompted by a report of delamination and corrosion found in a lower skin panel of the starboard elevator. The actions specified by this AD are intended to prevent loss of elevator structural integrity and reduced controllability of the airplane.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 810 series airplanes was published in the Federal Register on March 31, 1992 (57 FR 10836). That action proposed to require inspections of the lower skin panels of the elevator for skin quilting, corrosion, and delamination, and replacement, if necessary; application of water displacement fluid and anti-corrosion protective treatment to inner surfaces of the elevator lower skins; and rebalancing of the left and right elevators.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD,

that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD is estimated to be \$4,400. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-14-06. British Aerospace: Amendment 39-8288. Docket 92-NM-24-AD.

Applicability: Model Viscount 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of elevator structural integrity and reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, visually inspect the external surface of the left and right elevator lower skins for skin quilting, corrosion, and delamination, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 196, dated March 1991.

(b) As a result of the inspection required by paragraph (a) of this AD, accomplish the procedures specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with British Aerospace Viscount Alert PTL 196, dated March 1991:

(1) If no discrepancies are detected, apply water displacing fluid and anti-corrosion protective treatment to the inner surfaces of the elevator lower skins, and rebalance the elevators.

(2) If any discrepancies are detected, prior to further flight, replace quilted, corroded, or delaminated skins with a single thickness skin; apply water displacing fluid and anti-corrosion protective treatment to the inner surfaces of the elevator lower skins; and rebalance the elevators.

(c) Repeat the visual inspection of the elevator skins required by paragraph (a) of this AD, and inspect the condition of the corrosion protective treatment inside the elevators, at intervals not to exceed 850 hours time-in-service or 12 months, whichever occurs first. Replace any quilted, corroded, or delaminated skins, and renew any deteriorated corrosion protective treatment, prior to further flight, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 196, dated March 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 196, dated March 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the

Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

Darrell M. Pederson,  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.

[FR Doc. 92-16757 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 92-NM-131-AD; Amendment 39-8298; AD 92-13-51]

#### Airworthiness Directives; CASA Model C-212 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T92-13-51 that was sent previously to all known U.S. owners and operators of CASA Model C-212 series airplanes by individual telegrams. This AD requires repetitive functional tests of the backup blocking device associated with the power lever to ensure that it is operative. This amendment is prompted by tests that indicated that the blocking device was inoperable or operated only intermittently on some airplanes. The actions specified by this AD are intended to prevent failure of the backup blocking device, which could permit in-flight movement of the power levers below the flight idle position and lead to reduced controllability of the airplane.

**DATES:** Effective July 31, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-13-51, issued June 16, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1992.

Comments for inclusion in the Rules Docket must be received on or before September 14, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-131-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Construcciones

Aeronauticas S.A. (CASA), Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Hank Jenkins, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** On June 16, 1992, the FAA issued telegraphic AD T92-13-51, applicable to all CASA Model C-212 series airplanes, to require functional tests of the backup blocking device associated with the power levers to ensure that it is operative. Failure of the backup blocking device could permit in-flight movement of the power levers below the flight idle position and lead to reduced controllability of the airplane.

That action was prompted by the results of a preliminary investigation of a recent accident involving a CASA Model C-212 series airplane that had been modified in accordance with AD 91-03-10, Amendment 39-6883 (56 FR 3974, February 1, 1991). That AD requires modification of the propeller speed and pitch control system so that the control cannot be moved into reverse thrust while in flight. The modification involves a "backup blocking device" that is used in addition to the power lever triggers to prevent movement of the power levers to below the flight idle position during flight. Procedures for accomplishing this modification are described in CASA Service Bulletin 212-76-07, dated July 27, 1990.

Subsequent to the recent accident, the FAA requested one operator of CASA Model C-212 series airplanes to perform functional tests of the backup blocking devices installed in accordance with AD 91-03-10 on all eight airplanes in its fleet. As a result of these tests, the backup blocking devices on two of the operator's airplanes were found to be inoperative, and the backup device on one airplane operated only intermittently. Consequently, the FAA has determined that functional tests of these backup devices must be required to determine that they operate properly on other Model C-212 series airplanes.

If the flight idle stop gate triggers are lifted, failure of the backup blocking device could permit movement of the power levers below the flight idle position while the airplane is in flight.

This situation could result in reduced controllability of the airplane.

This airplane model is manufactured in Spain and Indonesia and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since an unsafe condition (inoperative backup blocking devices) has been identified that is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to require repetitive functional tests of the backup blocking device to ensure that it is operative. If the devices are found to be inoperative, the operator must restore the backup blocking devices to the configuration described in the pertinent CASA service bulletin (described above) and re-test the system.

Additionally, operators are required to report results of functional tests to the FAA.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on June 16, 1992, to all known U.S. owners and operators of CASA Model C-212 series airplanes. These conditions still exist, and the AD is hereby published in the *Federal Register* as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-131-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-13-51. Construcciones Aeronauticas S.A. (CASA): Amendment 39-8298. Docket No. 92-NM-131-AD.

Applicability: All Model C-212 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished within the last 300 hours time-in-service before the effective date of this AD.

To ensure proper operation of the backup blocking device, accomplish the following:

(a) Within 48 hours after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service, accomplish the following:

(1) Jack up the airplane so that both main landing gear shock absorbers are fully extended.

(2) Move both power levers to the flight idle position or above.

(3) Without power applied to the auxiliary battery busbar and/or with circuit breaker KA55 open, lift the flight idle stop gate triggers and move both power levers into the ground idle position or below. It should be possible to freely move the power levers below the flight idle gate in this step of the test.

(4) Move the power levers to the flight idle position or above a second time.

(5) Apply power to the auxiliary battery busbar and ensure that circuit breaker KA55 is closed.

(6) Lift the flight idle stop gate triggers and attempt to move both power levers to ground idle position or below. It should be impossible to move the power levers below the flight idle position. If one or both power lever(s) can be moved below the flight idle position in this step of the test, the backup blocking device is not working properly. Prior to further flight, restore the backup blocking devices to the configuration described in CASA Service Bulletin 212-76-07, dated July 27, 1990; and re-test the system.

(b) Within 10 days after accomplishing the functional tests required by paragraph (a) of this AD, report the results of those tests, positive or negative, to the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; fax (206) 227-1320. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The restoration of the backup blocking devices to the proper configuration shall be done in accordance with CASA Service Bulletin 212-76-07, dated July 27, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas S.A. (CASA), Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment becomes effective on July 31, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-13-51, issued June 16, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 24, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 92-16756 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 92-CE-16-AD; Amendment 39-8316; AD 92-16-07]

#### Airworthiness Directives; Cessna Model 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Model 441 airplanes. This action requires repetitive inspections of the horizontal stabilizer forward attach bulkhead for cracks until the installation of a reinforcement modification; and replacement of the bulkhead and installation of this reinforcement modification if found cracked. The Federal Aviation

Administration (FAA) has received reports of several of the affected airplanes developing cracks in the horizontal stabilizer forward attach bulkhead at Fuselage Station (FS) 387.22. The actions specified by this AD are intended to prevent loss of horizontal stabilizer front spar structural support caused by cracks in the fuselage bulkhead.

**DATES:** Effective August 30, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 30, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Abbott, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; Telephone (316) 946-4120; Facsimile (316) 946-4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain airplanes was published in the Federal Register on April 15, 1992 (57 FR 13062). The action proposed repetitive inspections of the horizontal stabilizer forward attach bulkhead for cracks until the installation of a reinforcement modification; and replacement of the bulkhead and installation of this reinforcement modification if found cracked. The actions would be done in accordance with the Accomplishment Instructions section of Cessna Attachment to Service Bulletin CQB91-1R1, and Cessna Service Kit SK441-103A, both dated June 21, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter, who is a pilot of one of the affected airplanes, does not object to the proposed rule and states that the reinforcement modification proposed by the AD has already been incorporated on the commenter's airplane.

No comments were received on the FAA's determination of the cost impact on the public.

After careful review of all available information including the comment discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 362 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 34 workhours per airplane to accomplish the required inspections, and that the average labor rate is approximately \$55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$676,940.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.69.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**92-16-07 Cessna:** Amendment 39-8316; Docket No. 92-CE-16-AD.

**Applicability:** Model 441 airplanes (serial numbers 441-0001 through 441-0362), certificated in any category.

**Compliance:** Required initially upon the accumulation of 3,000 hours time-in-service (TIS) or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,000 hours TIS, unless already accomplished.

To prevent loss of horizontal stabilizer front spar structural support caused by cracks in the fuselage bulkhead, accomplish the following:

(a) Gain access to and dye penetrant inspect the horizontal stabilizer forward attach bulkhead at Fuselage Station (FS) 387.22 in accordance with the Accomplishment Instructions section of Cessna Attachment to Service Bulletin CQB91-1R1, dated June 21, 1991.

(b) If cracks are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the horizontal stabilizer forward attach bulkhead at FS 387.22 and install Service Kit SK441-103A in accordance with the Accomplishment Instructions section of Cessna Service Kit SK441-103A, dated June 21, 1991.

(c) The installation of Service Kit SK441-103A in accordance with the Accomplishment Instructions section of Cessna Service Kit SK441-103A, dated June 21, 1991, is considered terminating action for the repetitive inspection requirements of this AD. Although not required, this installation may be accomplished at any time after the initial inspection.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) The inspections and possible installation required by this AD shall be done in accordance with Cessna Attachment to Service Bulletin CQB91-1R1, and Cessna Service Kit SK441-103A, both dated June 21, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be

inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(g) This amendment (39-8316) becomes effective on August 30, 1992.

Issued in Kansas City, Missouri, on July 9, 1992.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16711 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 92-NM-32-AD; Amendment 39-8292; AD 92-14-10]

**Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, that currently requires repetitive functional checks of the ground spoiler control system to detect incorrect indications. This amendment requires modification of the ground spoiler control system. This amendment is prompted by an FAA determination that long-term continued operational safety should be assured by actual modification of the airplane rather than repetitive inspections. The actions specified by this AD are intended to prevent inadvertent deployment of the ground spoilers and loss of lift.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, New

York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 83-07-25, Amendment 39-4631 (48 FR 16036, April 14, 1983), which is applicable to certain de Havilland Model DHC-7 series airplanes, was published in the Federal Register on March 16, 1992 (57 FR 9077). The action proposed to require modification of the ground spoiler control system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

References to the amendment number, effective date, and Federal Register publication citation corresponding to AD 83-07-25 have been corrected in this final rule. The notice referred to the amendment number as "Amendment 39-4753;" however, the correct amendment number of AD 83-07-25 is "Amendment 39-4631." The notice referred to the effective date of AD 83-07-25 as "November 2, 1983;" however, the correct effective date of that AD is "April 25, 1983." The notice referred to the Federal Register publication citation of AD 83-07-25 as "(48 FR 48803, October 21, 1983);" however, the correct citation for that AD is "(48 FR 16036, April 14, 1983)."

Paragraph (f) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that all 42 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator. However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of \$55 per work hour. Required parts will be

supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD is estimated to be \$110 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-4631 (48 FR 16036, April 14, 1983), and by adding a new airworthiness directive (AD), amendment 39-8292, to read as follows:

92-14-10. De Havilland, Inc.: Amendment 39-8292. Docket 92-NM-32-AD. Supersedes AD 83-07-25, Amendment 39-4631.

Applicability: Model DHC-7 series airplanes; as listed in de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of the ground spoilers and loss of lift, accomplish the following:

(a) Within 15 hours time-in-service or 7 days after April 25, 1983 (the effective date of AD 83-07-25, Amendment 39-4631), whichever occurs first, perform a functional check of the ground spoiler control system, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin A7-27-46, Revision A, dated November 19, 1982; or de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982.

(b) If the check required by paragraph (a) of this AD shows incorrect indications, operate the airplane in accordance with the Airplane Flight Manual Minimum Equipment List Supplement No. 4 until the requirements of paragraph (d) of this AD are accomplished.

(c) Repeat the functional checks required by paragraph (a) of this AD at intervals not to exceed 15 hours time-in-service, or 7 days, whichever occurs first.

(d) Within 6 months after the effective date of this AD, accomplish either paragraph (d)(1) or (d)(2) of this AD, as applicable, in accordance with de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982:

(1) For airplanes having serial numbers 1 through 73, inclusive, that have been retrofitted with Modification No. 7/1732; and airplanes having serial numbers 74 through 83, inclusive, 85, 86, and 89: Incorporate Modification No. 7/2296, in accordance with the service bulletin.

(2) For airplanes having serial numbers 1 through 73, inclusive, that have not been retrofitted with Modification No. 7/1732; and airplanes having serial numbers 84, 87, 88, and 90 through 93, inclusive: Incorporate Modification No. 7/2294, in accordance with the service bulletin.

(e) Incorporation of Modification No. 7/2296 or 7/2294, as required by paragraph (d)(1) or (d)(2) of this AD, constitutes terminating action for the repetitive functional checks required by paragraph (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The functional checks and modifications shall be done in accordance with de Havilland Service Bulletin 7-27-46, Revision A, dated November 19, 1982; and de Havilland Service Bulletin 7-27-46, Revision

B, dated December 17, 1982, which contains the following list of effective pages:

Page No.	Revision level	Date
1-4	B	Dec. 17, 1982
5-7	A	Nov. 19, 1982

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(i) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-16755 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 91-NM-63-AD; Amendment 39-8291; AD 92-14-09]

#### Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, that requires replacement of the currently-installed FMP with a modified FMP. This amendment is prompted by reports of changes in the FMP display values occurring without crew input, due to in-flight vibration that affects the rotary encoders. The actions specified by this AD are intended to prevent potentially inaccurate flight information (heading, altitude, and vertical speed displays) from being provided to the pilot and co-pilot.

DATES: Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

ADDRESSES: The service information referenced in this AD may be obtained

from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F-28 Mark 0100 series airplanes was published in the Federal Register on April 17, 1992 (57 FR 13671). That action proposed to require replacement of the currently-installed FMP with one having "Modification 6" installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Aside from these comments, the FAA has been advised that some affected operators already may have installed FMP panels containing Modification 6. Since the proposed AD action would have required the removal of the "currently-installed FMP" and replacement of it with an FMP having Modification 6 installed, the FAA considers that a situation may occur in which an operator might unnecessarily remove a correctly modified FMP panel (before checking to ascertain whether or not Modification 6 is already installed). For this reason, the final rule has been revised to clarify that operators must initially verify as to whether Modification 6 has been installed in the FMP that is currently installed on the airplane. Only those FMP panels without Modification 6 would have to be replaced in accordance with the AD.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will

neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$550. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-14-09. Fokker:** Amendment 39-8291. Docket 91-NM-63-AD.

**Applicability:** Model F-28 Mark 0100 series airplanes, certificated in any category.

**Compliance:** Required within 180 days after the effective date of this AD, unless accomplished previously.

To prevent the pilot and co-pilot from receiving inaccurate flight information, accomplish the following:

(a) Inspect the flight mode panel (FMP), part number 622-7477-301 or 622-7477-401, to verify if Modification 6 has been installed.

(1) If Modification 6 has been installed, no further action is required.

(2) If Modification 6 has not been installed, remove the FMP and replace it with an FMP having Modification 6 installed in accordance with Fokker Service Bulletin SBF100-22-031, dated September 9, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement of the FMP shall be done in accordance with Fokker Service Bulletin SBF100-22-031, dated September 9, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 92-16752 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 92-CE-05-AD; Amendment 39-8315; AD 92-16-06]

**Airworthiness Directives; Garrett AirResearch Aircraft Starters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all aircraft equipped with Garrett AirResearch aircraft starters. This action requires an inspection of owner/operator parts procurement records to determine if any aircraft starters have been procured from Classic Aviation, Inc., removal of any such installed aircraft starter, and replacement with an approved part. The Federal Aviation Administration (FAA) has received reports of improperly overhauled aircraft starters that were distributed by Classic Aviation being installed on the affected airplanes. The actions specified by this AD are intended to prevent in-service fatigue or structural failures of the aircraft starter, which could result in an in-flight fire or loss of control of the airplane.

**DATES:** Effective August 31, 1992.

**ADDRESSES:** Information that is applicable to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-6137; Facsimile (404) 991-3606.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to aircraft equipped with Garrett AirResearch aircraft starters was published in the *Federal Register* on February 27, 1992 (57 FR 6690). The action proposed (1) an inspection of the owner/operator parts procurement records to determine if any aircraft starters have been procured from Classic Aviation, Inc.; (2) removal of any such aircraft starter; and (3) replacement of any such starter with an approved part.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter agrees with the proposed rule. Two commenters believe that the proposed compliance time of 30

calendar days for the procurement record inspection/search is too short and one of these commenters recommends 90 calendar days as the compliance time for this inspection. The FAA concurs that the search of the aircraft procurement records could be somewhat time-consuming and has changed the compliance time for this inspection to 90 calendar days.

A commenter states that the 50-hour time-in-service (TIS) compliance time to remove any starter procured from Classic Aviation is too short. This commenter does not propose a specific time interval. The FAA does not concur and has determined that, in order to assure the safety of the affected aircraft, any starter procured from Classic Aviation should be removed and replaced within 50 hours TIS after the aircraft records inspection/search. It is noted that none of the airlines that commented object to the proposed removal time.

Three commenters believe the proposed rule would have a major operational and economic impact upon operators of Boeing Models 727 and 737 airplanes, and McDonnell Douglas Models DC-8, DC-9, and DC-10 airplanes. These commenters state that, if a large number of suspect starters are found as a result of the record search, then the normal complement of spare starters would not be adequate to replace the starters that are removed, which could cause grounding of a portion of the fleet. The FAA concurs that, in the situation described above, there could be a temporary grounding of a portion of the fleet; however, the FAA has determined that these unapproved parts are unsafe and, if not removed, the airworthiness of the affected aircraft is not assured. Therefore, the proposed AD remains unchanged as a result of these comments.

One of the above commenters suggests that the FAA should include a list of suspect starter serial numbers in the AD. As a result of this comment, the FAA is including a list of known suspect starter serial numbers; however, this listing may not include all suspect starters overhauled by Classic Aviation, Inc., and should not replace the thorough procurement records search.

Three commenters question whether the failure of the affected aircraft starters could result in an in-flight fire or loss of control of the aircraft as noted in the proposed rule. These commenters express that in-flight starter use is rare and, thus, exposure to in-flight failures is extremely remote. The FAA does not concur. It is the FAA's determination that (1) unauthorized repairs on the starter system components can lead to

unpredictable failures that increase the risk of aircraft damage and personal injury; and (2) that an unauthorized repair of the starter turbine wheel could cause the wheel to break in one or more high-energy pieces with a potential damage to the aircraft outside of the starter system, which could cause a possible engine fire and potential loss of the airplane.

After careful review of all information related to this action, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for (1) the change in the compliance time of the procurement records inspection from 30 calendar days to 90 calendar days; (2) the addition of a NOTE that includes a known list of suspect starter serial numbers as an aide in the records procurement inspection; and (3) minor editorial corrections. The FAA has determined that these minor changes, additions, and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time in paragraph (a) of the required AD is in calendar days to allow a grace period to inspect the procurement records. This grace period does not constitute FAA-approval that the part is safe for operation during this time.

The FAA has no way of determining how many airplanes may have these improperly overhauled aircraft starters installed. If an aircraft starter that was distributed by Classic Aviation, Inc., is found as a result of the proposed inspection of the procurement records as specified in paragraph (a) of the required AD, the installation of a new or approved overhauled aircraft starter will be required. The parts for this possible installation will cost approximately \$7,500. The FAA estimates that it will take approximately .5 workhours to accomplish the possible installation at an average labor rate of \$55. The possible replacement will cost approximately \$7,527.50 (parts plus labor) per airplane. Because the FAA is unable to determine how many airplanes have these unapproved overhauled aircraft starters installed or how many have been distributed by Classic Aviation, Inc., a cost impact for all U.S. operators is not available.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance

with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-16-06 Garrett AirResearch: Amendment 39-8315; Docket No. 92-CE-05-AD.

**Applicability:** All aircraft equipped with Garrett AirResearch aircraft starters that are installed in, but not limited to, Boeing Models 707, 727, and 737 airplanes and McDonnell Douglas Models DC-8, DC-9, and DC-10 airplanes, certificated in any category.

**Compliance:** Required as indicated, unless already accomplished.

To prevent in-service fatigue or structural failures of the aircraft starter, which could result in an in-flight fire or loss of control of the airplane, accomplish the following:

**Note 1:** The 90-calendar day compliance time specified in paragraph (a) of this AD is a grace period and does not constitute FAA approval that the part is safe for operation during this time.

(a) Within the next 90 calendar days (see Note 1) after the effective date of this AD, inspect the owner/operator parts procurement records dated from January 1, 1987 to the effective date of this AD, and identify any of the following aircraft starter part numbers that have been distributed by Classic Aviation, Inc.:

355290-1-1  
355740-1-1  
355760-3-1  
356364-1-1, 356364-8-2, and 356364-8-3  
356564-3-1  
383042-4-1  
383152-1-2, 383152-16-1, and 383152-19-1  
383222-1-1 and 383222-4-1  
383342-1-1, 383342-2-1, and 383342-4-1  
383350-1-1  
383370-1-1, 383370-2-1, 383370-3-1, 383370-4-1, 383370-5-1, 383370-6-1, 383370-7-1, and 383370-8-1  
383642-1-1  
383780-1-1  
384022-5-1 and 384022 (all dash numbers)

**Note 2:** The following serial numbers are known suspect starter serial numbers that have been procured from Classic Aviation, Inc.; however, this listing is provided for informational purposes only and may not include all suspect starters overhauled by Classic Aviation, Inc., and should not replace the thorough procurement records search:

89P1265 89P1281 89P1282 89P1425 89P1460  
89P1476 89P1487 89P1488 90P1644 90P1503  
90P1505 90P1507 90P1518 90P1522 90P1533  
90P1551 90P1554 90P1561 90P1578 90P1624  
90P1645 90P1646 90P1651 90P1664 90P1665  
90P1670 90P1685 90P1694 90P1695 90P1696  
90P1747 90P1760 90P1768 90P1802 90P1804  
90P1837 90P1866 90P1874 90P1902 90P1907  
90P1908 90P1927 90P1930 90P1934 90P1966  
91P2034 91P2063 91P2191 91P2192 P12756  
P10143CL P5244 P16601 P16726 P8633 40P475.

(b) If any of the starters referenced in paragraph (a) of this AD are identified as being distributed by Classic Aviation, Inc., within the next 50 hours time-in-service after the procurement records inspection required by paragraph (a) of this AD, replace any such installed aircraft starter with a new aircraft starter, or overhaul any such installed aircraft starter through an authorized repair station.

(c) This AD does not constitute FAA approval of Garrett AirResearch aircraft starters that have been distributed by Classic Aviation, Inc., and the affected aircraft is still subject to the maintenance, preventive maintenance, rebuilding, and alteration requirements of FAR 43.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may examine information that is applicable

to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39-8315) becomes effective on August 31, 1992.

Issued in Kansas City, Missouri, on July 9, 1992.

John R. Colomy,

Manager, Small Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 92-16713 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 906

[Docket No. 920660-2160]

#### International Affairs

**AGENCY:** National Weather Service,  
NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA is removing 15 CFR part 906 which describes NOAA's international training and foreign visitor's programs. The material in this part is informational rather than regulatory in nature and was inappropriately published as a regulation.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1325 East West Highway, Room 18119, Silver Spring, MD 20910, (301) 713-0053.

**SUPPLEMENTARY INFORMATION:** 15 CFR part 906 describes NOAA's program to provide training to recipients of fellowships awarded by the United Nations and its specialized agencies, the Agency for International Development, the Military Assistance Program, and under bilateral agreements arranged with the Department of State and foreign governments. In addition, 15 CFR part 906 describes NOAA's foreign visitor's programs. The material in the part is informational rather than regulatory in nature. Accordingly, the part is being repealed. This repeal will not affect the programs.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule.

Because a notice of proposed rulemaking is not required by section

553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

#### List of Subjects in 15 CFR Part 906

Cultural exchange program, Science and technology.

Robert C. Landis,

Deputy Administrator, National Weather Service.

#### PART 906—[REMOVED]

For the reasons set forth in the preamble, 15 CFR part 906 is removed.

[FR Doc. 92-16758 Filed 7-15-92; 8:45 am]

BILLING CODE 3510-22-M

#### 15 CFR Part 907

[Docket No. 920664-2164]

#### Environmental Affairs

**AGENCY:** National Weather Service, NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA is removing 15 CFR part 907 which describes the type of environmental information gathered by NOAA, the types of documents NOAA publishes which contain such information, and how to purchase copies. The material in the part is informational rather than regulatory in nature and was inappropriately published as a regulation.

**EFFECTIVE DATE:** July 16, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Julie Scanlon, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1325 East West Highway, Room 18119, Silver Spring, MD 20910, (301) 713-0053.

**SUPPLEMENTARY INFORMATION:** 15 CFR part 907 describes the types of environmental information gathered by NOAA, the types of documents NOAA publishes which contain such information, and how to purchase copies. The material in this part is informational rather than regulatory in nature, and was inappropriately published as a regulation. Accordingly, the part is being removed.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

#### List of Subjects in 15 CFR Part 907

Science and technology, Weather.

Robert C. Landis,

Deputy Administrator, National Weather Service.

#### PART 907—[REMOVED]

For the reasons set forth in the preamble, 15 CFR part 907 is removed.

[FR Doc. 92-16759 Filed 7-15-92; 8:45 am]

BILLING CODE 3510-22-M

#### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 240

[Release No. 34-30917; File No. S7-10-92]

RIN 3235-AF46

#### Amendment to Schedule 15G

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting an amendment to Schedule 15G under the Securities Exchange Act of 1934 ("Exchange Act") to include a brief description of a broker-dealer's obligations to its customers under Rule 15c2-6 in order to make the document more comprehensive. The Commission believes that the additional description is necessary because Rule 15c2-6 and the penny stock disclosure rules generally cover the same transactions in low-priced securities.

**EFFECTIVE DATE:** July 15, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Robert L. D. Colby, Chief Counsel, John M. Ramsay, Branch Chief, Belinda Blaine, Attorney, or Alexander Dill, Attorney, at (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Commission today is adopting an amendment to Schedule 15G under the Exchange Act,<sup>1</sup> the risk disclosure document that broker-dealers are required to give to customers prior to effecting a transaction in a penny stock, by adding a brief description of broker-dealer responsibilities under Rule 15c2-6,<sup>2</sup> the Commission's "cold-calling" rule.

<sup>1</sup> 17 CFR 240.15g-100.

<sup>2</sup> 17 CFR 240.15c2-6.

On April 10, 1992, the Commission adopted Schedule 15G and Rule 3a51-1 and Rules 15g-1 through 15g-6,<sup>3</sup> which require broker-dealers to disclose certain specified information to their customers (Rule 3a51-1 and Rules 15g-1 through 15g-6 are referred to herein as the "Penny Stock Rules").<sup>4</sup> The Penny Stock Rules were issued pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (the "Penny Stock Act").<sup>5</sup> The Schedule currently contains a discussion of broker-dealer obligations under the Penny Stock Rules.

The Commission believes that this additional description is necessary and appropriate in view of the fact that the Penny Stock Rules and Rule 15c2-6 generally cover the same transactions in low-priced securities.<sup>6</sup> Customers will benefit from a more comprehensive discussion in one document of the broker-dealer's duties with respect to these securities. The amendment to Schedule 15G is adopted as proposed.

##### II. Comments

In the Proposing Release, the Commission solicited comment on whether the language proposed to be added to Schedule 15G clearly communicated the obligations of a broker-dealer under Rule 15c2-6. Only the National Association of Securities Dealers, Inc. (the "NASD") submitted a comment to the Commission with respect to the proposed amendment to Schedule 15G. The NASD stated that the proposed revision to Schedule 15G is "clear and precise" and should "serve to

<sup>3</sup> 17 CFR 240.3a51-1, 240.15g-1—240.15g-6.

<sup>4</sup> Securities Exchange Act Release No. 30608 (April 28, 1992), 57 FR 18004 ("Penny Stock Adopting Release"). The Penny Stock Rules require broker-dealers, prior to effecting a transaction in a penny stock, to disclose to their customers certain information concerning the transaction and the penny stock market in general. Specifically, Rule 15g-2 requires broker-dealers to provide a risk disclosure document, as set forth in Schedule 15G; Rule 15g-3 requires disclosure of bid and ask quotations; Rules 15g-4 and 15g-5 require disclosure of any broker-dealer and associated person compensation in connection with the transaction; and Rule 15g-6 requires the provision of monthly account statements.

<sup>5</sup> Pub. L. 101-429, 104 Stat. 931 (1990). The Penny Stock Act was designed to address the lack of public information concerning penny stocks and problems of recidivism among promoters and other persons involved in penny stock offerings.

<sup>6</sup> On April 28, 1992, the Commission proposed for comment amendments to Rule 15c2-6 to conform its definitional and exemptive provisions with those of Rules 3a51-1 and 15g-1, respectively. Securities Exchange Act Release No. 30610 (April 28, 1992), 57 FR 18046 (the "Proposing Release"). The Commission anticipates that amendments to Rule 15c2-6 will be adopted soon. Because Schedule 15G becomes effective on July 15, 1992, the Commission believes that the addition to the Schedule described herein should be adopted now.

buttress strict compliance" with Rule 15c2-6.

### III. Description of the Amendment

Rule 15g-2 requires a broker-dealer that effects a transaction in a penny stock with or for the account of a customer to distribute to the customer, prior to effecting a transaction in a penny stock, a document describing the risks of investing in the penny stock market and other relevant information. The required risk disclosure document, as set forth in Schedule 15G, contains a brief description of a broker-dealer's obligations under the Penny Stock Rules. To make the document more comprehensive, Schedule 15G is being amended to include the following paragraph<sup>7</sup> describing the duties of a broker-dealer under Rule 15c2-6:

In addition to the items listed above, your brokerage firm must send to you:

- *A Written Statement of Your Financial Situation and Investment Goals.* In general, unless you have had an account with your brokerage firm for more than one year, or you have previously bought three different penny stocks from that firm, your brokerage firm must send you a written statement for you to sign that accurately describes your financial situation, your investment experience, and your investment goals, and that contains a statement of why your firm decided that penny stocks are a suitable investment for you. The firm also must get your written consent to buy the penny stock.

### IV. Conclusion

The Commission believes that the amendment to Schedule 15G furthers the purposes of investment protection under the Exchange Act and the Penny Stock Act.

Pursuant to section 4(c) of the Administrative Procedure Act,<sup>8</sup> publication of the amendment to Schedule 15G may not be made less than thirty days before its effective date, absent good cause. The effective date of Rule 15g-2 and Schedule 15G as originally adopted is July 15, 1992. To reduce the regulatory burden on broker-dealers of complying with additional forms, the Commission finds good cause that the amendment to Schedule 15G, as set forth in this release, shall become effective on July 15, 1992.

### V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act<sup>9</sup> requires that the Commission, in

adopting rules under the Exchange Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the amendment to Schedule 15G will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") pursuant to the requirements of the Regulatory Flexibility Act,<sup>10</sup> regarding the amendment. The FRFA indicates that the proposed amendment will not have any additional effect on small brokers or dealers or small issuers other than the effect described in the Regulatory Flexibility Analysis issued in connection with the adoption of Rule 15g-2 and Schedule 15G. A copy of the FRFA may be obtained from Alexander Dill, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549, (202) 504-2418.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

### VI. Statutory Basis and Text of Amendment

In accordance with the foregoing, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

*Authority:* 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

2. By amending § 240.15g-100 to add to the section entitled "Your Rights," before the paragraph entitled "Legal Remedies," the following paragraph:

§ 240.15g-100 SCHEDULE 15G—  
Information to be included in the document  
distributed pursuant to 17 CFR 240.15g-2.

### SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

### Schedule 15G

• • • • •

### Your Rights

• • • • •

• *A Written Statement of Your Financial Situation and Investment Goals.* In general, unless you have had an account with your brokerage firm for more than one year, or you have previously bought three different penny stocks from that firm, your brokerage firm must send you a written statement for you to sign that accurately describes your financial situation, your investment experience, and your investment goals, and that contains a statement of why your firm decided that penny stocks are a suitable investment for you. The firm also must get your written consent to buy the penny stock.

• • • • •

Dated: July 13, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-16885 Filed 7-15-92; 9:35 am]

BILLING CODE 8010-01-M

### DEPARTMENT OF STATE

### Bureau of Consular Affairs

### 22 CFR Part 41

[Public Notice 1657]

**Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Subpart B—Classification of Nonimmigrants; Subpart F—Business and Media Visas**

**ACTION:** Final rule.

**SUMMARY:** This final rule updates regulations in part 41 of title 22, Code of Federal Regulations, in order to add and/or revise existing regulations. This rule pertains to the documentation of certain nonimmigrant visa applicants as described in §§ 41.53, 41.54, 41.55, 41.56, and 41.57, and is mandated by statutory amendments to the Immigration and Nationality Act (INA), as amended.

In addition, this rule contains two sections which were inadvertently omitted from Interim Rule 1459. Section 41.11 contains new language exempting nonimmigrants described in INA 101(a)(15)(H)(i) and (L) from the presumption of being intending immigrants under the provisions of INA 214(b). Section 41.12 contains changes of

<sup>7</sup> The paragraph is included in the section in Schedule 15G entitled "Your Rights."

<sup>8</sup> 5 U.S.C. 551 et seq.

<sup>9</sup> 15 U.S.C. 78w(a)(2).

<sup>10</sup> 5 U.S.C. 603.

an editorial or technical nature stemming from amendments to INA 101(a)(15).

Editorial changes have also been made to other sections in this rule.

**EFFECTIVE DATE:** October 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel, Chief, Legislation and Regulations Division, 202-663-1204.

**SUPPLEMENTARY INFORMATION:** On August 19, 1991, the Department published interim rule 1459 at 56 FR 41068. That rule implemented changes to the INA, as amended by sections 205, 206, 207, and 208 of the Immigration Act of 1990, Public Law 101-649. Although sections 205 and 206 made significant changes to INA 101(a)(15)(H), temporary workers, and 101(a)(15)(L), intra company transferees, only modest changes were required to be made to the implementing regulations in §§ 41.53 and 41.54, as the statutory amendments focus on issues which must be addressed by the Immigration and Naturalization Service (INS) during the petition adjudication process. In regard to the new nonimmigrant visa classifications (the regulations at 22 CFR 41.55, "aliens with extraordinary ability"—INA 101(a)(15)(O), 22 CFR 41.56, "athletes, artists and entertainers"—INA 101(a)(15)(P), and 22 CFR 41.57 "international cultural exchange visitors"—INA 101(a)(15)(Q)), essentially the same language is used as in § 41.53 and § 41.54 as the allocation of responsibility is the same. The consular officer's responsibility for processing visa applications for a petition-based nonimmigrant visa classification is the same under each regulation, regardless of the requirements peculiar to each visa classification.

During the comment period the Department received only two comments regarding interim rule 1459, published on August 19, 1991.

#### Analysis of Comments

##### Consular Discretionary Authority

One commenter suggested that the language which is standard in all petition cases, immigrant and nonimmigrant, allows the consular officer too much discretion in denying visas. The regulatory language in question is "if the consular officer knows or has reason to believe that an alien applying for an H, L, O, P, or Q visa is not entitled to the classification as approved, then the consular officer shall suspend action in that case and return the petition to the approving office of the INS." The commenter proposes replacing "knows or has reason to believe" with "has definite knowledge or substantial reason to

believe". The commenter considers the current language vague and suggests that the substitute language would more appropriately limit the consul's authority to the evaluation of the verity of the information provided INS in the petition and would not permit readjudication of the INS approved petition.

The Department understands the intent of the commenter but finds the language of the interim regulation adequate and the proposed language to be superfluous. The concepts of "knowing" and "reason to believe" are well established in the law and are frequently used in immigration law. Guidance in applying these standards is found, *inter alia*, (1) in 22 CFR 40.6 concerning INA 221(g), (2) in Volume 9 of the Foreign Affairs Manual (FAM), § 40.23 concerning INA 212(a)(2)(C) and (3) in Volume 9 of the FAM, § 41.54 concerning INA 101(a)(15)(L).

The supplemental information to the interim rule explained fully the authority of consular officers in cases involving INS approved petitions and the officers' responsibility vis-a-vis such petitions. This explanation is consistently stated in instructions to consular officers, including the 9 FAM sections cited above. Consequently, the Department considers the language in the interim regulation to be adequate and appropriate. Thus, the interim language will be retained in this final rule.

The other commenter had three comments posed in the form of questions which are interrelated.

##### Basis for Denial

One comment, concerning § 41.53(d), queried the basis of denial of an H visa once a petition has been approved. As stated in the supplemental information to the interim rule, the consular officer has the responsibility to suspend action in a case and to return for reconsideration any approved petition if, in the course of visa processing, information comes to the officer's attention which provides him or her with knowledge or reason to believe that the applicant is not entitled to H visa classification. For instance, the consular officer could encounter facts inconsistent with those provided INS for petition adjudication and know or have reason to believe that the applicant is not entitled to H visa classification because of these facts. The consular officer's responsibility in such circumstances is to return the petition to INS for review.

##### Immigrant Intent and Labor Attestation

The commenter also questioned why immigrant intent was not made an element of the regulation and why no

mention was made of labor attestation. The Department did not include the criteria of intent in the regulations concerning H visas as the statute imposes no affirmative responsibility on the consular officer to adjudicate intent. Indeed, Pub.L. 101-649 eliminated consideration of such intent from the consular officer's responsibilities. No reference was made to labor attestation in the regulation to § 41.53, because consular officers possess no adjudicative authority in the labor attestation process. Furthermore, as explained in the supplemental information published with the interim rule, the approval of a petition by INS constitutes prima facie evidence to the consular officer that the petition beneficiary has met all the requirements of the visa classification, including satisfaction of the labor condition requirement.

##### Additional Amendments

Due to an oversight, 22 CFR 41.11 was not included with the interim rule. Section 41.11 adds new language which exempts nonimmigrants described in INA 101(a)(15)(H)(i) or (L) from the presumption of being intending immigrants under the provisions of INA 214(b). In addition, 22 CFR 41.12, also not included, makes technical amendments to the classification symbols.

##### Final Rule

This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule does not require collection of information subject to the Paperwork Reduction Act.

##### List of Subjects in 22 CFR Part 41

Aliens, Artists and entertainers, Classification of nonimmigrants, Classification symbols.

Accordingly, part 41, Code of Federal Regulations, is amended to read as follows:

##### PART 41—[AMENDED]

1. The authority citation for part 41 is revised to read:

Authority: 8 U.S.C. 1104; Sec. 205(b), 206, 207, 208, 209, 104 Stat. 5025-5027, 8 U.S.C. 1101(a)(15).

2. Section 41.11, paragraph (b)(1), and § 41.12 are revised to read as follows:

**§ 41.11 Entitlement to nonimmigrant status.**

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by INA 214(b), except for an alien applying for a nonimmigrant visa under the provisions of INA

101(a)(15)(H)(i) or (L). An alien shall be considered to have established bona fide nonimmigrant status only if the consular officer is satisfied that his case falls within one of the nonimmigrant categories described in INA 101(a)(15) or is otherwise established by law or treaty.

**§ 41.12 Classification symbols.**

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp. The following visa symbols shall be used:

Class	Section of law or treaty citation	Visa symbol
Ambassador, public, minister, career, diplomatic or consular officer, and members of immediate family.	101(a)(15)(A)(i); 66 Stat. 167	A-1.
Other foreign government official or employee, and members of immediate family.	101(a)(15)(A)(ii); 66 Stat. 167	A-2.
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family.	101(a)(15)(A)(iii); 66 Stat. 167	A-3.
Temporary visitor for business.	101(a)(15)(B); 66 Stat. 167	B-1.
Temporary visitor for pleasure.	101(a)(15)(B); 66 Stat. 167	B-2.
Temporary visitor for business and pleasure.	101(a)(15)(B); 66 Stat. 167	B-1 and B-2.
Alien in transit.	101(a)(15)(C); 66 Stat. 167	C-1.
Alien in transit to United Nations Headquarters District under § 11.(3), (4), or (5) of the headquarters agreement with the United Nations.	101(a)(15)(C); 66 Stat. 167	C-2.
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit.	212(d)(8); 66 Stat. 188	C-3.
Crew member (ship or aircraft crew) and children.	101(a)(15)(D); 66 Stat. 167	D.
Treaty investor, spouse and children.	101(a)(15)(E)(i); and children	E-1.
Student (academic or language training program).	101(a)(15)(E)(ii); 66 Stat. 168	E-2.
Spouse and children of alien classified F-1.	101(a)(15)(F)(i); 66 Stat. 168 75 Stat. 527	F-1.
Principal resident representative of recognized foreign member government to international organization, representative's staff, and members of immediate family.	101(a)(15)(F)(ii); 75 Stat. 527	F-2.
Other representative of recognized foreign member government to international organization, and members of immediate family.	101(a)(15)(G)(i); 66 Stat. 168	G-1.
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family.	101(a)(15)(G)(ii); 66 Stat. 168	G-2.
International organization officer or employee, and members of immediate family.	101(a)(15)(G)(iii); 66 Stat. 168	G-3.
Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes, and members of immediate family.	101(a)(15)(G)(iv); 66 Stat. 168	G-4.
Registered Nurse.	101(a)(15)(G)(v); 66 Stat. 168	G-5.
Alien in specialty occupation (Profession).	101(a)(15)(H)(i)(a); 102 Stat. 3909	H-1A.
Temporary worker performing agricultural services unavailable in the U.S. (Petition filed on or after June 1, 1987).	101(a)(15)(H)(i)(b); 104 Stat. 5020	H-1B.
Temporary worker performing other services unavailable in the U.S.	101(a)(15)(H)(ii)(a); 100 Stat. 3411	H-2(A).
Trainee.	101(a)(15)(H)(ii)(b); 66 Stat. 168; 104 Stat. 5019	H-2(B).
Spouse and children of alien classified H-1, H-2, or H-3.	101(a)(15)(H)(iii); 66 Stat. 168; 84 Stat. 116	H-3.
Representative of foreign information media, spouse and children.	101(a)(15)(H); 84 Stat. 168	H-4.
Exchange visitor.	101(a)(15)(I); 66 Stat. 168	I.
Spouse and children of alien classified J-1.	101(a)(15)(J); 66 Stat. 167, 75 Stat. 527	J-1.
Fiance(e) of U.S. citizen.	101(a)(15)(J); 75 Stat. 527	J-2.
Children of alien classified K-1.	101(a)(15)(K); 84 Stat. 116	K-1.
Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation).	101(a)(15)(K); 84 Stat. 116	K-2.
Spouse and children of alien classified L-1.	101(a)(15)(L); 84 Stat. 116	L-1.
Student (vocational or other recognized nonacademic).	101(a)(15)(M)(i); 95 Stat. 1611	L-2.
Spouse and children of alien classified M-1.	101(a)(15)(M)(ii); 95 Stat. 1611	M-1.
Parent of an alien child classified SK-3 under section 101(a)(27)(i)(i).	101(a)(15)(N); 100 Stat. 3359	M-2.
Child of parent classified N-8 or of alien classified SK-1; SK-2; SK-4 under section 101(a)(27)(i)(ii), (iii), or (iv).	101(a)(15)(N); 100 Stat. 3359	N-8.
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1096	N-9.
Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796	NATO-1.
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family.	Art. 14, 5 UST 1096	NATO-2.
Officials of NATO (other than those classifiable under NATO-1) and members of immediate family.	Art. 18, 5 UST 1096	NATO-3.

Class	Section of law or treaty citation	Visa symbol
Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO and their dependents.	Art. 21, 5 UST 1100	NATO-5.
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an allied headquarters under the protocol on the status of international military headquarters set up pursuant to the North Atlantic Treaty; and their dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877	NATO-6.
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate family.	Arts. 12-20, 5 UST 1094-1098	NATO-7.
Aliens with extraordinary ability in sciences, arts, education, business or athletics.	101(a)(15)(O)(i); 104 Stat. 5023	O-1.
Accompanying alien	101(a)(15)(O)(ii)	O-2.
Spouse or child of O-1 or O-2	101(a)(15)(O)(iii)	O-3.
Internationally recognized athlete or member of internationally recognized entertainment group.	101(a)(15)(P)(i); 104 Stat. 5024	P-1.
Artist or entertainer in a reciprocal exchange program	101(a)(15)(P)(ii)	P-2.
Artist or entertainer in a culturally unique program	101(a)(15)(P)(iii)	P-3.
Spouse or child of P-1, P-2, or P-3	101(a)(15)(P)(iv)	P-4.
Participant in an international cultural exchange program	101(a)(15)(Q); 104 Stat. 5026	Q-1.
Alien in a religious occupation	101(a)(15)(R); 104 Stat. 5027	R-1.
Spouse or child of R-1	101(a)(15)(R)	R-2.

3. § 41.53 and § 41.54 are revised to read as follows:

**§ 41.53 Temporary workers and trainees.**

(a) *Requirements for H classification.* An alien shall be classifiable under INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and

(2) With respect to the principal alien:

(i) the consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of the approval by INS of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by the Immigration and Naturalization Service does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(d) *Alien not entitled to H classification.* The consular officer must suspend action on this alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not entitled to the classification as approved.

(e) *"Trainee" defined.* The term *Trainee*, as used in INA

101(a)(15)(H)(iii), means a nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions.

(f) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

**§ 41.54 Intracompany transferees (executives, managers, and specialists).**

(a) *Requirements for L classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien:

(i) The consular officer has received an individual petition approved by INS to accord such classification to the alien or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of approval by Immigration and Naturalization Service (INS) of an individual petition according such classification to the alien or confirmation of the extension by INS of the alien's authorized stay in such classification; or

(iii) The alien shall have presented to the consular officer an approved blanket petition or a notification of approval

listing those intracompany relationships and positions which were found to qualify under INA 101(a)(15)(L); or

(iv) The alien shall have presented to the consular officer a blanket petition to accord such classification to qualified aliens who are being transferred to qualifying positions identified in the approved blanket petition; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* (1) The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2)(i) or (ii) of this section.

(2) The period of validity of a visa issued on the basis of paragraph (a) to this section is not limited to the period of validity indicated in the blanket petition, notification, or confirmation required in paragraphs (a)(2)(iii) or (iv) of this section.

(d) *Alien not entitled to L-1 classification under individual petition.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) is not entitled to such classification as approved.

(e) *Alien not entitled to L-1 classification under blanket petition.* The consular officer shall deny L classification based on a blanket

petition if the documentation presented by the alien claiming to be a beneficiary thereof does not establish to the satisfaction of the consular officer that

(1) The alien has been continuously employed by the same employer, an affiliate or a subsidiary thereof, for 1 year within the 3 years immediately preceding the application for the L visa;

(2) The alien was occupying a qualifying position throughout that year; or

(3) The alien is destined to a qualifying position identified in the petition and in an organization listed in the petition.

(f) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

4. Sections 41.55, 41.56, and 41.57, are revised to read as follows:

**§ 41.55 Aliens with extraordinary ability.**

(a) *Requirements for O classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(O) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien:

(i) The consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of the approval by Immigration and Naturalization Service (INS) of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Approval of visa.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(d) *Alien not entitled to O classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA

101(a)(15)(O) is not entitled to the classification as approved.

**§ 41.56 Athletes, artists and entertainers.**

(a) *Requirements for P classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(P) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien:

(i) The consular officer has received a petition approved by Immigration and Naturalization Service (INS) to accord such classification or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of the approval by INS of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Approval of visa.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, confirmation, or extension of stay required in paragraph (a)(2) of this section.

(d) *Alien not entitled to P classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(P) is not entitled to the classification as approved.

**§ 41.57 International cultural exchange visitors.**

(a) *Requirements for Q classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(Q) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(3) The alien shall have presented to the consular officer official confirmation of the approval by Immigration and Naturalization Service (INS) of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification.

(b) *Approval of petition.* The approval of a petition by INS does not establish

that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraphs (a)(2) or (a)(3) of this section.

(d) *Alien not entitled to Q classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(Q) is not entitled to the classification as approved.

Dated: June 19, 1992.

Elizabeth M. Tamposi,  
Assistant Secretary for Consular Affairs.  
[FR Doc. 92-16478 Filed 7-15-92; 8:45 am]

BILLING CODE 4710-06-M

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**29 CFR Part 20**

**Debt Collection Act of 1982;  
Organizational Change**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of Labor is amending its rules implementing the Debt Collection Act of 1982 to reflect the reassignment of certain responsibilities for debt collection from the Assistant Secretary for Administration and Management to the Chief Financial Officer. This reassignment has been made necessary by virtue of the passage of Chief Financial Officers Act of 1990, implemented in the Department by Secretary's Order 1-92.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Barnhard, Office of Financial Policy and Systems, Office of the Comptroller, Office of the Assistant Secretary for Administration and Management, Department of Labor, room S-4502, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8184.

**SUPPLEMENTARY INFORMATION:** The Department of Labor published in the Federal Register on February 6, 1985 (50 FR 5202) and February 5, 1987 (52 FR 3772) final regulations implementing the Debt Collection Act of 1982 (Act). Subpart A implements the credit

reporting provisions of the Act; Subpart B, administrative offset; Subpart C, assessment of interest, penalties and administrative costs; and Subpart D, salary offset. These regulations were duly published in the *Federal Register* as proposed rules, with comments considered and discussed during final rule-making.

The rules specify certain responsibilities of the Assistant Secretary for Administration and Management. With the passage of the Chief Financial Officers Act of 1990 (31 U.S.C. 901-903) as implemented in the Department by Secretary's Order 1-92, these responsibilities have been reassigned to the Department's Chief Financial Officer.

#### Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (5 U.S.C. 553) since this rule-making merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of 5 U.S.C. 553(b)(A).

#### Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive and merely reflects agency organization, practice and procedure.

#### Executive Order 12291

This rule is not classified as a "rule" under Executive Order 12291 on Federal regulation, because it is a regulation relating to agency organization, management or personnel. See section 1(a)(3).

#### Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

#### Paperwork Reduction Act

This final rule is not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

#### List of Subjects in 29 CFR Part 20

Claims, Government employees, Loan programs, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble, 29 CFR part 20 is amended as follows:

#### PART 20—DEBT COLLECTION ACT OF 1982

1. The authority citation for part 20 is revised to read as follows:

Authority: 5 U.S.C. 5511 *et seq.*; 31 U.S.C. 901-903; 31 U.S.C. 3711 *et seq.*

2. In Part 20 all references to the "Assistant Secretary for Administration and Management" or "Assistant Secretary" are revised to read "Chief Financial Officer".

Signed at Washington, DC, this 9th day of July, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-16634 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-23-M

#### DEPARTMENT OF DEFENSE

##### Department of the Navy

#### 32 CFR Part 706

#### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ARLEIGH BURKE (DDG 51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Captain R.R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ARLEIGH BURKE (DDG 51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

#### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

#### PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

#### § 706.2 [Amended]

2. In Table Four of § 706.2, the entry in paragraph 16 for USS ARLEIGH BURKE (DDG 51) is revised to read as follows:

Vessel	Number	Obstruction angle relative ship's headings
USS ARLEIGH BURKE	DDG 51	100.00 thru 112.50 degree.

3. In Table Five of § 706.2, the entry for USS ARLEIGH BURKE (DDG 51) is revised to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS ARLEIGH BURKE.....	DDG 51	X	X	X	20

Dated: June 29, 1992.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-16742 Filed 7-15-92; 8:45 am]

BILLING CODE 3810-01-M

**32 CFR Part 706****Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment****AGENCY:** Department of the Navy, DOD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS JOHN BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, sec 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, section 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights in this vessel in a manner differently from that prescribed

herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (Water), and Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table Four of § 706.2 is amended by adding the following vessel in paragraphs 15 and 16:

15. \* \* \*

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS JOHN BARRY.....	DDG 52	1.94 meters.

16. \* \* \*

Vessel	Number	Obstruction angle relative ship's headings
USS JOHN BARRY	DDG 52	87.22 thru 104.01 degree.

3. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, Sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, Sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, Sec. (3)(a)	Percentage horizontal separation attained
USS JOHN BARRY.....	DDG 52	X	X	X	13

Dated: June 19, 1992.

Approved:

J. E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-16605 Filed 7-15-92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP Hampton Roads, Regulation 92-05-24]

#### Safety Zone Regulations; Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in the vicinity of Cape Charles, Virginia around the Maritime Prepositioning Force (MPF) vessels S.S. OBREGON and S.S. KOCAL. The purpose of this safety zone is to protect mariners from the hazards associated with explosives onboard the MPF vessels while they are anchored near Cape Charles. All vessels greater than 65 feet are prohibited from transiting within 1500 yards of the MPF vessels while they are anchored near Cape Charles. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

**EFFECTIVE DATE:** This regulation is effective from 12 p.m. on July 7, 1992, and terminates at 12 midnight on August 31, 1992, unless terminated sooner by the Captain of the Port, Hampton Roads, Virginia.

**FOR FURTHER INFORMATION CONTACT:** ENS M. Marchione, Project Officer, USCG Marine Safety Office Hampton Roads, telephone number (804) 441-3290.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect mariners operating in the vicinity of the MPF vessels while anchored near Cape Charles.

#### Drafting Information

The drafters of this regulation are ENS

M. Marchione, project officer for the Captain of the Port, Hampton Roads, and LT M.L. Lombardi, project attorney, Fifth Coast Guard District Legal Office.

#### Discussion of Regulation

The circumstance requiring this regulation is the need for the Military Sealift Command (MSC) to conduct lighterage and training operations in the Port of Hampton Roads. Each vessel carries approximately 1.2 million pounds of military explosives. The MPF vessels, which are military support vessels, will be anchored near Fort Story, Virginia in Anchorage "A" during active periods of lighterage and training operations. While anchored in Anchorage "A", the COTP may positively direct the movement of vessels under the authority of 33 CFR 110.168(f)(1), therefore a safety zone is not required. While the MPF vessels are anchored near Cape Charles, Virginia a safety zone is required to keep a safe distance between vessels over 65 feet and the MPF vessels to minimize the risk of personnel injury or damage to property as a result of an explosion on board the MPF vessels. This safety zone will be in effect from 12 p.m. on July 7, 1992, and terminates at 12 midnight on August 31, 1992, unless terminated sooner by the Captain of the Port, Hampton Roads, Virginia.

#### Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The Captain of the Port is anticipating that the economic impact will be so minimal that a full regulatory evaluation will be unnecessary. This regulation is temporary in nature and will not impede the flow of normal commercial traffic that is currently allowed to transit the port of Hampton Roads. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. The regulation contains no information collection or record keeping requirements.

#### Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it

does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

#### Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 180.5.

2. A new section 165. T05-12 is added to read as follows:

#### § 165.T05-12 Safety Zone: Chesapeake Bay, Cape Charles, Virginia.

(a) *Location.* The following area is a safety zone: The waters bound by a circle whose radius is 1500 yards around the MPF vessels while anchored near Cape Charles. Vessels greater than 65 feet are prohibited from entering this zone.

(b) *Effective date.* This regulation is effective from 12 p.m. on July 7, 1992, and terminates at 12 midnight on August 31, 1992.

(c) *Regulations.* (1) Entry into this safety zone is prohibited by all vessels greater than 65 feet unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representative. The general requirements of § 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or his designated representative. The Captain of the Port, Hampton Roads can be contacted at telephone number (804) 441-3307 or may be contacted via Coast Guard Group, Hampton Roads, Virginia on VHF channels 13 and 16.

Dated: July 7, 1992.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 92-16811 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[PP 1E3948/R1146; FRL-4076-2]

**Pesticide Tolerances for Aluminum Tris (O-Ethylphosphonate); Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correction.

**SUMMARY:** EPA issued a final rule in the Federal Register of May 28, 1992 that revised the table of commodities listings in 40 CFR 180.415(a) and inadvertently omitted several commodities that had been added in a previous document. This technical correction document reinstates the commodities.

**EFFECTIVE DATE:** This correction is effective July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of May 28, 1992 (57 FR 22435), EPA amended 40 CFR 180.415(a) to add a nonregionally restricted registration of the fungicide aluminum tris (O-ethylphosphonate) in or on the raw agricultural commodity fresh ginseng root. The document set out a revised table for paragraph (a), but inadvertently omitted the commodities brassica (cole) leafy vegetables group, leafy vegetables (except brassica vegetable) group, and onions, dry bulb that had been added in a final rule issued in the Federal Register of April 1, 1992 (57 FR 10998). This technical correction document reinstates these commodities by reissuing the table in 40 CFR 180.415(a).

This document contains corrections and technical amendments only and does not require notice and comment, 5 U.S.C. 553.

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 1992.

Douglas D. Camp, Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.415, the table in paragraph (a) is revised to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.  
(a) \* \* \*

Commodity	Parts per million
Brassica (cole) leafy vegetables group.....	55
Caneberries.....	0.1
Citrus.....	0.5
Ginseng root, fresh.....	0.1
Leafy vegetables (except brassica vegetables) group.....	80
Pineapple.....	0.1
Pineapple fodder.....	0.1
Pineapple forage.....	0.1
Onions, dry bulb.....	0.5

[FR Doc. 92-16631 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****49 CFR Part 383**

RIN 2125-AC98

**Commercial Driver's License Reciprocity With Mexico**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** Notice is hereby given that the Federal Highway Administrator has determined that a Licencia Federal de Conductor issued by the Mexican Federal Government meets the commercial driver testing and licensing standards contained in 49 CFR part 383. Accordingly, the Licencia Federal de Conductor, as described herein, will be considered to be the single commercial driver's license (CDL) for operation in the United States by Mexican drivers. Mexico will extend similar reciprocity to holders of CDLs issued by the States and the District of Columbia. Also, a Mexican driver holding a Licencia Federal de Conductor issued by Mexico will be prohibited from obtaining any driver's license from a State or the District of Columbia.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366-4001, or Mr. David Oliver, Office of Chief Counsel, (202) 366-1350, Federal Highway

Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** Effective April 1, 1992, no person shall operate a commercial motor vehicle (CMV) unless such person has a CDL. The standards for CDLs are found at 49 CFR part 383. In summary, this part requires a driver to take and pass knowledge and, if applicable, driving tests which meet Federal minimum standards to get a CDL. Also, CDLs are to be issued by the driver's State or jurisdiction of domicile.

An exception to this provision is found at 49 CFR 383.23(b). Under this exception, the Federal Highway Administrator is authorized to determine the compatibility of the commercial driver testing and licensing standards of foreign countries (foreign jurisdictions) with those of the United States. Any CMV operator who is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a commercial driver's license (CDL) that is either in accordance with, or similar to, the standards in subparts F, G, and H of part 383, must obtain a nonresident CDL from a State which does comply with those standards. These drivers from foreign jurisdictions must possess a nonresident CDL in order to operate a CMV after April 1, 1992, in the United States.

Effective December 29, 1988, the FHWA Administrator determined that commercial drivers' licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are compatible with the CDL standards and are granted reciprocal status for purposes of United States law. A driver holding a commercial driver's license issued under the Canadian National Safety Code may drive in the United States on that license; at the same time the driver is prohibited from obtaining a nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States. This determination is codified as a footnote to 49 CFR 383.23(b).

Negotiations between representatives from the United States and the government of the United Mexican States culminated in a Memorandum of Understanding (MOU) on the issue of driver license reciprocity. The MOU was signed on November 21, 1991, by former Secretary of Transportation, Samuel K. Skinner, and Mexican Secretary of Communications and Transportation, Andres Caso Lombardo, and is attached as appendix A to this preamble. It

provides that the parties will issue licenses for CMV drivers that conform to these Federal minimum standards including knowledge and skills testing, disqualification and physical requirements of drivers. The most important provisions of the MOU are summarized below and provide essentially that:

1. The *Licencia Federal de Conductor* will be issued according to standards similar to the CDL testing and licensing standards.

2. On April 1, 1992, Mexican drivers of CMVs entering the United States will be required to have a new *Licencia Federal de Conductor* issued to comply with the standards set forth in the MOU.

3. The new *Licencia Federal de Conductor* will be recognized by all States and will be valid in the United States.

4. The United States and Mexico will exchange information on the disqualification, revocation, or cancellation of licenses.

5. CDLs issued by a State in the United States will be recognized by Mexico. (Access for United States drivers is currently being negotiated as part of the North American Free Trade Agreement.)

Accordingly, the Administrator has determined that the testing and licensing standards in Mexico for the *Licencia Federal de Conductor* meet the standards contained in 49 CFR part 383.

For holders of a current *Licencia Federal de Conductor*, the Mexican Authorities may issue a new *Licencia Federal de Conductor* based on passage of a new knowledge test, without requiring a skills test, if such applicant is currently employed as a driver and has a good driving record. This practice is consistent with the practice in the United States, as permitted by Federal regulation (49 CFR 383.77). After April 1, 1992, new license applicants will be required to take the skills test to obtain the new *Licencia Federal de Conductor*.

It should be noted that Mexican drivers must be medically examined every 2 years to receive and retain the *Licencia Federal de Conductor*; no separate medical card is required as in the United States for drivers in interstate commerce. As the *Licencia Federal de Conductor* cannot be issued to or kept by any driver who does not pass stringent physical exams, the *Licencia Federal de Conductor* itself is evidence that the driver has met medical standards as required by the United States. Therefore, Mexican drivers with a *Licencia Federal de Conductor* do not need to possess a medical card while driving a CMV in the United States.

The United States is considering the possibility of incorporating the medical qualification process into the CDL issuance. If and when that occurs, the CDL, like the *Licencia Federal de Conductor*, will be evidence that the driver has met medical standards.

After April 1, 1992, consistent with the MOU and to preserve the single license concept, United States licensing jurisdictions will not issue nonresident CDLs to drivers domiciled in Mexico. Mexico is extending similar reciprocity to holders of CDLs issued by the States in conformity with the United States standards.

This publication constitutes notice to the States that the same preemptive effect is present with respect to the *Licencia Federal de Conductor* as with a license issued by States of the United States. Therefore, all United States licensing jurisdictions are required by statute and regulation to grant reciprocity to the Mexican licenses. In addition, States which do not comply with the provisions of the MOU may have Federal highway funds withheld for each year that the State is in noncompliance starting in October of 1993.

The substance of this notice is incorporated as a footnote in regulatory text of 49 CFR part 383 by means of a technical amendment which is set forth below.

#### Rulemaking Analyses and Notices

##### *Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is primarily technical in nature and is needed solely to update the regulations to include an enabling agreement between the government of Mexico and the United States. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, and because it is not anticipated that such action would result in the receipt of useful information, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation.

Since the changes in this document are primarily technical in nature, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities, and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### *Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### *Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

#### *National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

#### *Regulation Identifier Number*

The regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### *List of Subjects in 49 CFR Part 383*

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, and Motor vehicle safety.

## Appendix A

Note: This appendix will not appear in the Code of Federal Regulations.

**Memorandum of Understanding Between the Government of the United States of America and the Government of the United Mexican States Relating to the Recognition and Validity of Commercial Driver's Licenses and Licencias Federales de Conductor**

The government of the United States of America and the government of the United Mexican States, hereinafter referred to as the parties;

Having established the subgroup on Commercial Driver's Licenses and Licencias Federales de Conductor of the U.S.-Mexico transportation working group;

Recognizing the close commercial relationship between the two countries and desiring to facilitate dynamic transborder transportation;

Considering the understanding concerning a framework of principles and procedures for consultation regarding trade and investment relations signed on November 8, 1987;

Considering the review of the rules and regulations of both countries relating to the licensing of drivers engaged in commercial operations;

Desiring the harmonization of both parties' regulations;

Desiring the mutual acceptance of Commercial Driver's Licenses and Licencias Federales de Conductor; and

Seeking to further the objective of providing greater safety on the roadways of both countries;

Have agreed as follows:

## Article 1

## Definitions

For the purpose of this memorandum of understanding, including its Annex which forms an integral part thereof:

(A) *Commercial Driver's License* means a license issued by a State of the United States of America or the District of Columbia in accordance with U.S. statutory and regulatory requirements to an individual which authorizes the individual to operate a class of commercial motor vehicle;

(B) *Non-resident Commercial Driver's License* means a Commercial Driver's License issued to an individual domiciled in a foreign country;

(C) *Licencia Federal de Conductor* means a license issued by the Secretariat of Communication and Transport of the United Mexican States which authorizes a person to drive vehicles engaged in Federal public service and private vehicles of companies and industries which transport products requiring the use of Mexican Federal highways;

(D) *Driver* means an individual who operates a motor vehicle in interstate and foreign commerce in the territory of either party;

(E) *Resident* means a person who maintains in the territory of either party a true, fixed, and permanent home and principal place of living to which the person has the intention of returning whenever the person is absent; and

(F) *Subgroup* means the Subgroup on Commercial Driver's Licenses and Licencias Federales de Conductor established by the U.S.-Mexico Transportation Working Group.

## Article 2

## Mutual Recognition and Grant of Rights

(1) No later than April 1, 1992, each party shall require drivers, licensed pursuant to its authority, to: (1) Successfully complete a knowledge exam meeting the standards set forth in Article I(A) of the Annex, which forms an integral part of this MOU; (2) successfully complete a skills exam meeting the standards set forth in Article I(B) of the Annex; and (3) meet its established medical standards. Drivers fulfilling these requirements, if otherwise qualified to operate the appropriate class of vehicle, shall be issued a Commercial Driver's License or a Licencia Federal de Conductor, as appropriate, consistent with Article I(b)(3) of the Annex.

(2) On April 1, 1992, all Commercial Driver's Licenses and Licencias Federales de Conductor issued pursuant to Paragraph 1 shall be given complete recognition and validity by Federal and State authorities in both countries.

(A) A resident U.S. driver operating a motor vehicle who possesses a valid Commercial Driver's License issued pursuant to Paragraph 1 shall not be required to obtain a Licencia Federal de Conductor to operate in the United Mexican States.

(B) A resident Mexican driver operating a motor vehicle who possesses a valid Licencia Federal de Conductor issued pursuant to Paragraph 1 shall not be required to obtain a non-resident Commercial Driver's License to operate in the United States of America;

(C) Drivers possessing a Commercial Driver's License or a Licencia Federal de Conductor may drive only those classes of vehicles for which they have been tested and licensed to drive.

(3) Should either party be unable to implement the provisions of Paragraph 1, that party shall inform the other party. In such event, the parties shall consult for the purpose of agreeing upon a new date for the mutual recognition of Commercial Driver's Licenses and Licencias Federales de Conductor as provided for in Paragraph 2. In the interim, neither party shall be obligated to comply with the provisions of Paragraph 2.

## Article 3

## Medical Qualification

In recognition of the medical qualification program for a Licencia Federal de Conductor, the United States of America shall conduct a comprehensive study of processes for including driver medical qualification determinations within its commercial driver's licensing process.

## Article 4

## Application of Law

U.S. and Mexican drivers of motor vehicles referred to in Article 2(2) shall be subject to the applicable laws and regulations of the country in which they operate such motor vehicles.

## Article 5

## Exchange of Information

On a regular basis, but not less than annually, the parties shall exchange information relevant to suspensions or revocations of Commercial Driver's Licenses or Licencias Federales de Conductor, or convictions (either administrative or judicial) resulting from traffic violations. The parties shall exchange general information regarding Commercial Driver's Licenses and Licencias Federales de Conductor. The scope of the information exchanged shall be determined by the subgroup as set forth in Article II of the Annex.

## Article 6

## Continuation of Subgroup

The subgroup shall, unless otherwise agreed, verify the implementation of the requirements established by this memorandum of understanding. Article III of the Annex sets forth the future activities of the subgroup.

## Article 7

## Implementation

The agencies responsible for the implementation of the provisions of this memorandum of understanding shall be the Department of Transportation for the United States of America and the Secretariat of Communication and Transport for the United Mexican States.

## Article 8

## Consultations

Either party may, at any time, request consultations relating to the implementation of this memorandum of understanding. Such consultations shall begin at the earliest possible date, but not later than 60 days after a party makes a request, unless otherwise agreed. Each party shall prepare and present during such consultations relevant evidence in support of its position to facilitate consultations.

## Article 9

## Entry Into Force

This memorandum of understanding shall enter into force upon the date of signature.

## Article 10

## Termination

Either party may, at any time, give notice in writing to the other party of its decision to terminate this memorandum of understanding. Such termination shall take effect one hundred and eighty (180) days after such notice.

## Article 11

## Amendments

This memorandum of understanding may be amended at any time by the agreement of both parties. Any amendment shall enter into force upon an exchange of diplomatic notes.

In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this memorandum of understanding.

Done in duplicate at Washington, DC in the English and Spanish languages, each of which shall be of equal authenticity, this 21st day of November, nineteen hundred and ninety one.

For the Government of the United States of America:

Samuel K. Skinner

For the Government of the United Mexican States:

Caso Lomabado

#### Annex

#### I. Standards for the Licensing Process of Commercial Driver's Licenses and Licencias Federales de Conductor

##### A. Driver's Knowledge Test

1. In accordance with Article 2 of the MOU, each party shall require its applicant for a Commercial Driver's license or a Licencias Federales de Conductor to successfully complete a driver's knowledge test. The Licencias Federales de Conductor will be issued in accordance with Article 126 of the Law of General Means of Communication and Articles 47 and 48 of the Transport Regulation on Federal Highways. The Commercial Driver's License shall be issued in accordance with 49 U.S. Code of Federal Regulations part 383. In both cases, the knowledge content areas of the driver's knowledge test shall be comparable to the knowledge content areas contained in the Commercial Driver's License standards as set forth in 49 U.S. Code of Federal Regulations part 383 and regulations to be promulgated by the United Mexican States before April 1992. An applicant shall only be tested on the portion of the knowledge content areas that are relevant to the type of vehicle the applicant will be licensed to drive.

2. The driver's knowledge test for applicants for a Licencia Federal de Conductor shall: (A) Include questions on each of the knowledge content areas referred to in Paragraph 1 above; (B) contain at least (80) questions; and (C) be based on a passing score of eighty (80) percent.

3. The format of the driver's knowledge test given by any state of the United States of America or the District of Columbia for Commercial Driver's Licenses and by the United Mexican States for the Licencia Federal de Conductor need not be similar. For example, the United States of America shall administer a "general knowledge" test to all commercial drivers regardless of the class of Commercial Driver's License for which the applicant applies. The United States of America shall also administer separate "air-brake" and "endorsement" tests to drivers of specialized vehicles. The "general knowledge", "air brake", and "endorsement" tests shall be based on the knowledge content areas referred to in Paragraph 1 above. The United Mexican States shall administer a separate test for each of the license classes that incorporates all of the knowledge content areas referred to in Paragraph 1 above for the types of vehicles that fall within the license class.

##### B. Driver's Skills Test

1. In accordance with Article 2 of the MOU, each party shall require its applicant for a Commercial Driver's License or a Licencia

Federal de Conductor to successfully complete a driver's skills test. The Licencia Federal de Conductor will be issued in accordance with Article 126 of the Law of General Means of Communication and Articles 47 and 48 of the Transport Regulation on Federal Highways. The Commercial Driver's License shall be issued in accordance with 49 U.S. Code of Federal Regulations part 383. In both cases, the skills content areas of the driver's skills test shall be comparable to the skills content areas contained in the Commercial Driver's License standards as set forth in 49 U.S. Code of Federal Regulations part 383 and regulations to be promulgated by the United Mexican States before April 1992. The driver's skills test shall be: (a) Given in a commercial motor vehicle that is representative of the class of vehicles the driver will be licensed to drive; and (b) conducted in on-street conditions or a combination of on-street and off-street conditions.

2. The parties shall review the feasibility of incorporating the use of simulators in administering part of the skills test.

3. The Commercial Driver's License and the Licencia Federal de Conductor shall indicate on the document that it reflects the agreed upon standards referred to in paragraphs I (a)(1) and (b)(1).

#### II. Exchange of Information

1. In accordance with Article 5 of the MOU, the parties shall exchange information regarding Commercial Driver's Licenses and Licencias Federales de Conductor. The scope of the information exchanged shall be determined by the subgroup. With regard to information relevant to suspensions or revocations of a Commercial Driver's License or Licencia Federal de Conductor, or convictions (either administrative or judicial) resulting from traffic violations, the following information shall be exchanged: (a) Convictions (either administrative or judicial) that result from violations committed by drivers of one party while driving in the territory of the other party; and (b) suspensions and revocations of a resident driver's Commercial Driver's License or Licencia Federal de Conductor because of violations committed in the territory of the issuing party. Each party shall take appropriate action, consistent with its national laws, against its drivers based on this information.

2. At a minimum, the information shall contain the name of the driver, the driver's license number, the date of conviction, the specific offense, the location of the offense, and the State issuing the license for U.S. drivers.

#### III. Activities of the Subgroup

1. In accordance with Article 6 of the MOU, the subgroup shall be convened as necessary to discuss the effective implementation of the provisions of the MOU. The first meeting shall be held not later than March 1, 1992, to prepare for the full implementation of the MOU.

2. To facilitate the exchange of information required by Article 5 of the MOU and Article II of the Annex, the subgroup shall convene as necessary to determine the scope of

information on Commercial Driver's Licenses and Licencias Federales de Conductor to be exchanged. The subgroup shall determine the methods and process for exchange of this information and information relevant to suspensions or revocation of a Commercial Driver's License or Licencias Federales de Conductor, or convictions (either administrative or judicial) resulting from traffic violations by December 31, 1991, or another date as mutually agreed.

3. By December 31, 1991, or another date as mutually agreed, the subgroup shall agree upon an indicator on the Commercial Driver's License and the Licencias Federales de Conductor to show that the license reflects the agreed upon standards referred to in paragraphs I (a)(1) and (b)(1) of the Annex.

4. In accordance with Article 3 of the MOU, and in recognition of the United Mexican States' Medical Qualification Program for the Licencias Federales de Conductor, U.S. members of the subgroup and other U.S. officials will visit the United Mexican States to observe its medical exam system and procedures for the Licencias Federales de Conductor, as well as to identify differences between the processes used by each party to review medical qualifications of drivers of commercial vehicles. The purpose of the visit is to help determine if the procedures used in the Mexican medical qualification program are adaptable to the U.S. commercial driver's licensing process.

Issued on: July 9, 1992.

T.D. Larson,  
Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

#### PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES [AMENDED]

1. The authority citation for 49 CFR part 383 is revised to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 12701 et seq; 49 CFR 1.48.

##### § 383.23 [Amended]

2. In § 383.23, paragraph (b) is amended by revising footnote number one to read as follows:

##### § 383.23 Commercial driver's license.

\* \* \* \* \*

(b) Exception. \* \* \* \*

[FR Doc. 92-16688 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-22-M

<sup>1</sup> Effective December 29, 1988, the Administrator determined that commercial drivers' licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part.

Continued

## 49 CFR Part 391

(FHWA Docket No. MC-92-27)

**Qualification of Drivers; Vision Waivers****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of final disposition.

**SUMMARY:** The FHWA announces its decision to issue waivers of the vision requirements (49 CFR 391.41(b)(10)) to drivers who meet certain conditions set forth in this document. The FHWA will continue to process the applications already received, and waivers will be issued to eligible drivers in the order their applications were received by the FHWA. The FHWA will continue to accept applications for waiver of the vision requirements until September 21, 1992.

**EFFECTIVE DATE:** This document is effective on July 18, 1992.

**ADDRESSES:** Applications may be submitted to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For program information about the waiver program, please contact Mr. Neill L. Thomas or Mrs. Eliane Viner, Office of Motor Carrier Standards at (202) 366-2981. If you have legal questions, you may contact Mr. Eric A. Kuwana or Mr. Raymond W. Cuprill, Office of Chief Counsel at (202) 366-0834. Both of the above offices are located at the Federal Highway Administration, Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:****Waiver Background**

On March 25, 1992, the FHWA published a notice in the Federal Register (57 FR 10295) to announce its intent to accept applications for waiver of the vision requirements, as contained in the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 391.41(b)(10). The March 25 notice sets forth the proposed program to waive the vision requirements for drivers who meet certain conditions. As a supplement to the March 25 notice, a June 3 notice modified some of the

program's conditions, clarified some of its details, and requested comments (Docket No. MC-92-27) on the proposed vision waiver program. The comment period on the proposed waiver program closed on July 8, 1992. All comments received have been carefully analyzed during the process which led to the decision to proceed with the vision waiver program and to publish this notice of final disposition.

**Concurrent Rulemaking**

This waiver program will complement the FHWA's efforts to review, and to eventually amend, its vision requirements through a rulemaking action. Drivers of commercial motor vehicles (CMVs) have been required to meet specific Federal vision requirements since 1937. Although the FHWA has spent many resources on studies to ascertain the effects of vision deficiencies on driving safety, the current vision requirements have not been modified since 1971.

As part of an ongoing process to reassess its regulations, the FHWA published an advance notice of proposed rulemaking (ANPRM) on February 28 of this year (57 FR 6793), to review the FHWA's vision requirements, as currently contained in the driver qualification requirements of the FMCSRs, 49 CFR part 391. Although the comment period on the ANPRM (Docket No. MC-91-1) remained open until April 28, 1992, the FHWA published its notice of intent to accept applications for waivers on March 25. The comments to the ANPRM and the June 3 notice have been analyzed by the FHWA and have been considered in the decision to issue vision waivers. This waiver program does not constitute a final disposition of the rulemaking initiated by the ANPRM of February 28.

As part of the concurrent rulemaking process initiated by the February 28 ANPRM, the FHWA contracted with Ketron, Inc. to study the relationship between visual disorders and commercial motor vehicle safety. Copies of the Ketron study, entitled "Visual Disorders and Commercial Drivers," are now available for distribution and a copy has been placed in the docket to the ANPRM. The Ketron study illuminated the lack of empirical data to establish a link between vision disorders and commercial motor vehicle safety. The study also failed to provide a sufficient foundation on which to propose a satisfactory vision standard for drivers of CMVs in interstate commerce.

As explained in the notices of March 25 and June 3, the waiver program will enable the FHWA to conduct a study

comparing a group of experienced, visually deficient drivers with a control group of experienced drivers who meet the current Federal vision requirements. This study will provide the empirical data necessary to evaluate the relationships between specific visual deficiencies and the operation of CMVs. The data will permit the FHWA to properly evaluate its current vision requirement in the context of actual driver performance, and, if necessary, establish a new vision requirement which is safe, fair, and rationally related to the latest medical knowledge and highway technology.

**Comments**

The FHWA received over 50 separate comments in response to the June 3 notice, a few of which bore multiple signatures of drivers in favor of the proposal. The FHWA has also received over 1,000 applications for waivers from visually deficient drivers. All but four of the comments supported the vision waiver program as proposed, or, in a few cases, with slight modifications. The Owner-Operator Independent Drivers Association supports the vision waiver program and its conditions because "[C]ommercial vehicle operators with visual deficiencies have proven to be safe and successful drivers in interstate commerce and within commercial zones." Two presidents of local chapters of the International Brotherhood of Teamsters support the waiver program as proposed because it will allow some of their members, who have demonstrated safe driving records over many years, to retain their jobs. A member of Congress, an attorney representing a driver, and the Assistant Majority Leader for the Illinois House of Representatives wrote to support the vision waiver program on behalf of visually deficient drivers of CMVs. Comments from drivers were unanimous in support of the vision waiver program.

The Advocates for Highway and Auto Safety (AHAS), an association based in Washington, DC, submitted material for consideration along with its comments opposing the vision waiver program. The AHAS stated that the FHWA improperly invoked both the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 355, as amended) and the Americans with Disabilities Act of 1990 (ADA) (Pub. L. 101-336, 104 Stat. 327, as amended) to justify the vision waiver program. The FHWA fully acknowledges that neither of these acts mandates changes to the driver qualification requirements in the FMCSRs. Rather, the ADA contains general goals that Federal agencies,

Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL or any other type of driver's license, from a State or other jurisdiction in the United States.

although not required, should consider when making policy decisions or taking actions which affect persons with disabilities. Individualized determinations and the use of qualified individuals with disabilities are unquestionably the goals of this legislation and should be important factors in the FHWA's decisionmaking process.

The AHAS and the Insurance Institute for Highway Safety (IIHS) assert that the FHWA's study, "Visual Disorders and Commercial Drivers" (November 1991), and other prior studies provide a sufficient basis for creating a new, more stringent vision requirement in the FMCSRs. To the contrary, the FHWA believes that the results of the Ketron study, and those before it, do not provide a sufficient nexus between the current vision requirements and driving performance. Therefore, the FHWA believes that the data collected from the research study accompanying the vision waiver program will provide the necessary information to proceed with rational, performance-oriented rulemaking.

The AHAS also challenges the vision waiver program as being inconsistent with the statutory responsibilities of the FHWA because its actions must "enhance the safety of commercial motor vehicle operations and the health of commercial motor vehicle drivers." This quote from the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, as amended) is taken out of context, and hence, is misleading. In the 1984 Act, Congress expressly authorized the Department of Transportation (DOT) to "waive, in whole or in part, application of any regulation issued under this section [section 206] with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." (emphasis added.) Congress recognized that not all actions by the DOT could possibly increase the level of safety for CMV operations. By using the word "consistent," the Congress permitted the DOT to grant waivers in instances where the current level of CMV safety would remain constant. The FHWA believes that the vision waiver program will allow only those drivers who have an established record of safe CMV operations to drive in interstate commerce. Therefore, the level of safety for CMV operations will remain unchanged as a result of the vision waiver program.

The IIHS observed that the research study to be undertaken during the

waiver program was not fully described. It provided much useful constructive criticism about how such a study should be conducted, including acceptable standards of epidemiologic study design. The FHWA is aware of the importance of this research, and fully intends to take every necessary precaution to assure its validity.

The National Private Truck Council (NPTC), which expressed strong support for the waiver program, also provided some useful observations on the conduct of the research study. The NPTC was concerned that the composition of the study group, which understandably is limited to experienced drivers with safe driving records, may compromise any conclusions, unless the control group is compatible. The NPTC was also concerned about the lack of any indication in the notices with respect to any action to be taken in the event the conditions which are required to be reported by the control group, in fact, occur. For example, the study group drivers are required to submit medical reports annually confirming that the vision capability has not worsened. If the condition does worsen, the notice does not indicate what action the FHWA will take concerning that driver. The answer is that the waiver will be withdrawn if the vision in the better eye falls below the minimum requirement. On the other hand, conviction of a moving violation or the occurrence of an accident during the study period will not necessarily terminate the waiver, unless the conviction or occurrence would be disqualifying under applicable regulations.

The American Trucking Association (ATA) offered that "[t]he trucking industry is opposed to the granting of waivers to drivers who are unable to meet the current vision standards." Originally, the ATA's opposition was largely based on the lack of an opportunity for public comment, but the June 3 notice provided for public comment. The ATA's current opposition centers on its belief that the existing vision requirements should not be relaxed in any manner. The FHWA is not relaxing its vision requirements, as contained in the FMCSRs (49 CFR 391.41(b)(10)). As authorized in the 1984 Act, the program permits conditional waivers from the regulatory requirements in order to test their efficacy. Moreover, this action relieves the burden on those drivers, many of whom have safely driven for decades with vision deficiencies, who became ineligible due to changes in the law (Commercial Driver's License requirement) unrelated to vision. At the

same time, the waivers will provide necessary data for an empirical study. The FHWA strongly believes that the vision waiver program is consistent with its regulatory responsibilities and is well within its statutory authority.

#### Statutory Authority

The Congress authorized the Secretary of Transportation, after notice and an opportunity for comment, to waive application of any regulation with respect to any person or class of persons if the Secretary determines that such a waiver (1) is not contrary to the public interest and (2) is consistent with the safe operation of commercial motor vehicles. This authority was granted by section 206(f) of the Motor Carrier Safety Act of 1984. The FHWA Administrator is delegated this authority pursuant to 49 CFR 1.48(aa).

#### Public Interest

The FHWA believes that the waiver program is in the public interest. It is consistent with the national policy, as expressed in the Rehabilitation Act of 1973 and the ADA, to facilitate the employment of qualified individuals with disabilities. The vision waiver program removes a barrier that may unduly restrict individuals from pursuit of their chosen occupation. The program allows for individualized determinations based on performance standards that complement medical qualifications. In essence, an applicant's driving ability, past experience, and medical evaluation substitute for the stricter vision requirements.

#### Safety Impact

The FHWA believes that the waiver program's conditions enable the FHWA to find that such waivers are "consistent with the safe operation of commercial motor vehicles." All drivers eligible for a waiver have proven experience and have demonstrated their ability to safely operate a CMV for a number of years. The reporting requirements of the waiver program and the FHWA's Motor Carrier Management Information System, along with existing Commercial Driver's License standards applicable to waived drivers of heavier vehicles, ensure that unsafe, visually impaired drivers are removed from operation just as effectively as other unsafe drivers. The drivers who receive waivers will not be accorded any additional privileges which would allow them to operate in a manner different from other drivers of CMVs in interstate commerce.

In fact, the drivers eligible for vision waivers are being held to a slightly higher standard. These experienced

drivers must have driving records that not only equal their peers, but surpass them. Eligibility for the waiver program is based, first of all, on experience gained in a commercial motor vehicle, and further on a driving record much cleaner than presently required, even for a CDL. These conditions, along with the waiver program's reporting requirements, are not applied to drivers who meet the current vision requirements contained in the FMCSRs. The FHWA believes that the following conditions will effectively screen out unsafe drivers.

#### Conditions

The conditions which drivers must meet to be eligible for the waiver program remain as proposed. An applicant is required to have three years of driving experience in a CMV with a record that shows (1) no suspensions or revocations of his/her driver's license for operating violations in any motor vehicle; (2) no involvement in a reportable accident (in a CMV) in which the applicant was cited for a moving traffic violation; (3) no convictions for a disqualifying offense, as described in 49 CFR 383.51, (i.e., driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, leaving the scene of an accident involving a commercial motor vehicle, or the commission of a felony involving the use of a commercial motor vehicle) or more than one serious traffic violation, as that term is defined in 49 CFR 383.5, (i.e., excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality, while driving a commercial motor vehicle); and (4) no more than two convictions for any other moving traffic violations while driving a commercial motor vehicle.

If the applicant is currently licensed to drive a CMV (e.g., holds a valid Commercial Driver's License), the four requirements in the "document in writing" section of this document must go back three years from the date of the application for waiver. If the applicant is not currently licensed to drive a CMV, the four requirements in the "document in writing" section must go back three years from the date (after April 1, 1990) when the applicant last possessed a valid license to operate a CMV. The documentation required must be in writing, and where applicable, be on forms or letterhead of the State licensing agency or the reviewing ophthalmologist or optometrist.

#### Applications

Many of the applications received to date are missing information necessary to make a decision whether to grant a waiver to that individual. Individuals with incomplete applications will be contacted by the FHWA and requested to resubmit their applications and include the missing information. The FHWA suggests that future applicants use plain paper (there is no prescribed application form), include all the supporting documents (such as the DMV record), and use the format set out below.

#### Vital Statistics

Name of applicant: (First name, middle initial, last name)  
Address: (House number and street name) City, State, and zip code:  
Telephone number: (Area code and number)  
Sex: (Male or female)  
Date of birth: (Month, day, and year)  
Age:  
Social Security number:  
State driver's license number: (Issuing State and license number)  
Driver's license classification code:  
Driver's license date of issuance: (Month, day, and year)

#### Experience

Number of years driving straight trucks:  
Approximate number of miles driving straight trucks:  
Number of years driving tractor-trailer combinations:  
Approximate number of miles driving tractor-trailer combinations:  
Number of years driving buses:  
Approximate number of miles driving buses:

#### Anticipated post-waiver operations

Employer's name: (If applicable)  
Employer's address:  
Employer's telephone number:  
Type of vehicle to be operated: (Straight truck, tractor-trailer combination, bus)  
Commodities to be transported: (e.g., general freight, liquids in-bulk (in cargo tanks), steel, dry-bulk, large heavy machinery, refrigerated products)  
States in which you will drive:  
Estimated number of miles you will drive per year:  
Estimated number of daylight driving hours per week:  
Estimated number of nighttime driving hours per week:

#### Document In Writing

(1) You now possess a valid "intrastate" CDL or possessed a license (non-CDL) to operate a CMV after April

1, 1990 (e.g., a photostatic copy of both sides of the driver's license or certification from the State licensing agency);

(2) You operated a CMV for the three-year period immediately preceding:

(i) The date of this application if you are currently licensed to drive a CMV; or

(ii) The date (after April 1, 1990) you last held a valid license to operate a CMV (e.g., a signed statement from the applicant's employer or a certified statement from the applicant, in the event the applicant was operating as a motor carrier);

(3) Your driving record for that three-year period:

(a) Contains no suspensions or revocations of your driver's license for the operation of any motor vehicle (including your personal vehicle);

(b) Contains no involvement in a reportable accident for which you received a citation for a moving traffic violation;

(c) Contains no convictions for a disqualifying offense or more than one serious traffic violation while driving a commercial motor vehicle during the three-year period, which disqualified, or should have disqualified, the applicant in accordance with the driver disqualification provisions of 49 CFR 383.51.

(d) Contains no more than two convictions for any other moving traffic violations in a commercial motor vehicle.

(4) You have been examined by an ophthalmologist or an optometrist and that person, in writing, has:

(a) Identified and defined the visual deficiency;

(b) Certified that the visual deficiency has not worsened since the last vision examination required by your State's driver licensing agency;

(c) Certified that your visual acuity is at least 20/40 (Snellen), corrected or uncorrected, in the better eye; and

(d) Certified that in his/her medical opinion, you are, with your vision deficiency, able to perform the driving tasks required to operate a commercial motor vehicle.

#### Waivers

The waivers will be issued in a prescribed form and signed by or for the Administrator. Instructions will be sent to eligible drivers that will contain all pertinent conditions. Failure to report the required information to the FHWA or comply with the other conditions of the waiver program will be cause for immediate revocation of a driver's vision waiver. All waivers will display a

unique number to identify the driver. State and Federal enforcement officials will have the authority and right to verify the authenticity of each waiver.

#### Reporting Requirements

There will be five reporting requirements which must be met in full during the term of any waiver issued to a vision deficient driver. Each driver will be required to:

(1) Report any citation for a moving violation involving the operation of a CMV to the Federal Highway Administration (FHWA) within 15 days following the issuance;

(2) Report the judicial/administrative disposition of such charge within 15 days following notice of disposition;

(3) Report any accident involvement whatsoever while operating a CMV to the FHWA within 15 days following the accident (include Federal, State, insurance company, and/or motor carrier accident reports);

(4) Submit documentation of an annual examination by an ophthalmologist or an optometrist to the FHWA at least 15 days before the annual anniversary of the effective date of the waiver. The documentation must contain the medical specialist's

certification that the individual is still eligible under the waiver's vision criteria and the vision deficiency has not worsened since the last vision examination required by the waiver; and

(5) Report to the FHWA by the 15th calendar day of each month (not including the month in which the waiver becomes effective):

(a) The number of miles driving a CMV during the preceding month;

(b) The number of daylight hours and the number of nighttime hours driving a CMV during the preceding month; and

(c) The number of days a CMV was not operated during the preceding month.

All documentation described in items (1) through (5), above, must be mailed to the FHWA, Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to submit timely reports will be cause for cancellation of the waiver.

#### Request for Control Group Participants

The success of the research study, which is part of the vision waiver program, is dependent upon obtaining the voluntary participation of drivers without vision deficiencies. Effective comparative analysis can be performed

only with a control group of drivers that is approximately twice the numerical size of the group of waived drivers. The FHWA, therefore, requests that drivers without vision deficiencies volunteer to participate in the control group. The control group will be requested to submit the same demographic information as is required of the waived driver group, except for the certification by the ophthalmologist or optometrist. Volunteers should write the Vision Waiver Program at the aforementioned address. They will be contacted directly thereafter. The control group would subsequently be asked to report, quarterly, the same type of accident and traffic conviction information as is required by the waived driver group. This voluntary action will enable the FHWA to conduct a valid study, which will be used in the decisionmaking process for concurrent rulemaking initiated by the February 28 ANPRM.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Issued on: July 10, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-16770 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-22-M

# Proposed Rules

Federal Register

Vol. 57, No. 137

Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

#### 7 CFR Part 1942

RIN 0575-AB25

### Community Facility Loans

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration proposes to amend the Agency's policies and procedures governing the administration of Community Facility loans. This action is necessary to change the requirement for audits based upon annual gross income and is necessary to extend the deadline for submission of audits based on annual gross income. The intended effect is to ease the reporting burden for smaller entities and provide flexibility in obtaining audit services.

**DATES:** Comments must be submitted on or before August 17, 1992.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250-0700.

**FOR FURTHER INFORMATION CONTACT:** Joyce Brooks, Program Management Branch, Community Facilities Division, RDA, USDA, room 6304-S, Washington, DC 20250, Telephone (202) 720-1490.

#### SUPPLEMENTARY INFORMATION:

#### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than \$100 million and there will be no increase in costs or prices for consumers, individual industries,

organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

#### Background

FmHA presently requires borrowers with annual gross income of \$100,000 or more to submit annual audits no later than 90 days following the period covered by the audit. FmHA proposed this action to change the requirement for audits based upon annual gross income from the present threshold of \$100,000 to \$500,000 and to extend the deadline for submission of audits based on annual gross income from 90 days after the audit period to 150 days after the audit period. These changes will ease the reporting burden for smaller entities and provide borrowers more flexibility in obtaining audit services.

Conforming changes to other regulations will be implemented at the final rule stage.

#### Program Affected

This program, Community Facility loans, is listed in the Catalog of Federal Domestic Assistance as Community Facilities loans under Number 10.423. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J.

#### List of Subjects in 7 CFR Part 1942

Community development, Loan security, Mortgages, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

## PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Community Facility Loans

2. In § 1942.17, paragraphs (q)(4)(i)(B)(1) and (q)(4)(ii) introductory text are amended by revising "90" to read "150", the heading of paragraph (q)(4)(ii)(A) and the heading and introductory text of paragraph (q)(4)(ii)(B) are amended by revising "\$100,000" to read "\$500,000", and paragraph (q)(4)(i)(A)(2)(iii) is revised to read as follows:

#### § 1942.17 Community Facilities.

(q) \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) \* \* \*

(iii) Local governments and Indian tribes that receive less than \$25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A-128 audits and FmHA audit requirements, except for those based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section. However, any audits performed shall be government by the requirements

prescribed by State or local law or regulation.

Dated: May 11, 1992

La Verne Ausman

Administrator, Farmers Home Administration.

Mary Ann Baron,

Acting Administrator Rural Development Administration.

Dated: May 12, 1992.

[FR Doc. 92-16563 Filed 7-15-92; 8:45 am]

BILLING CODE 3410-07-M

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 625

RIN 3052-AB11

#### Application for Award of Fees and Other Expenses Under the Equal Access to Justice Act

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Proposed rule.

**SUMMARY:** The FCA proposes regulations to implement the Equal Access to Justice Act (EAJA). In accordance with the EAJA, the proposed regulations establish conditions under which parties who prevail over the FCA in certain administrative proceedings may be awarded attorney fees and other expenses.

**DATES:** Comments must be submitted on or before July 16, 1992.

**ADDRESSES:** Comments should be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all comments received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

#### FOR FURTHER INFORMATION CONTACT:

Anthony N. Torres, Attorney, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

or

William L. Larsen, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On August 5, 1985, Congress enacted Public Law 99-80, 99 Stat. 183, which reauthorized and amended the Equal Access to Justice Act, 5 U.S.C. 504. The EAJA provides for the award of attorney fees and other expenses to parties who prevail over Federal agencies in certain

administrative proceedings. The EAJA requires Federal agencies, after consultation with the Chairman of the Administrative Conference of the United States (ACUS), to establish uniform procedures for the submission and consideration of applications for fee and expense awards. Accordingly, the FCA proposes to adopt the following rules implementing the EAJA. In general, the proposed rules follow the ACUS Model Equal Access to Justice Rules, 1 CFR part 315. The proposed rules do not apply to judicial awards of costs and fees in civil actions. See 28 U.S.C. 2412.

The FCA has considered the appropriateness of proceeding with this regulation in light of the President's 120-day regulatory review period and has determined that promulgation of EAJA implementing regulations will enhance the fairness of the FCA's administrative process with minimal economic impact on the institutions of the Farm Credit System.

#### Subpart-by-Subpart Analysis

##### Subpart A—General Provisions

The six sections in this subpart set forth the basic substance of the EAJA. Section 625.1 explains that the purpose of these rules is to implement the EAJA. Section 625.2 lists which FCA proceedings are covered and clarifies that the FCA "presiding officer" is equivalent to the "adjudicative officer" under the EAJA. Section 625.3 sets forth the statutory eligibility criteria for awards, including net worth limitations. Section 625.4 defines the standards for granting awards. Sections 625.5 sets forth the statutorily limited amount of allowable fees that can be claimed. The EAJA limits attorney or agent fees to a maximum of \$75 per hour unless the agency determines by regulation that a higher fee is justified by an increase in the cost of living or by special circumstances. The FCA is not proposing an alternative fee structure in these regulations. Section 625.6 explains when awards may be granted against another Federal agency that participates in an adversary adjudication before the FCA.

##### Subpart B—Applicant Information Required

There are four sections in this subpart. Sections 625.10-625.12 outline in detail the contents of the fee application, including the net worth exhibit and the documentation of fees and expenses. Section 625.13 establishes when an application may be filed.

##### Subpart C—Procedures for Considering Applications

There are nine sections explaining FCA procedures for considering applications for fee and expense awards. Section 625.20 requires that even if a proposed settlement of the award has been reached between the plaintiff and the FCA counsel, an application must be filed to comply with the EAJA. Section 625.21 requires the application to be filed and served in the same manner as other pleadings in the underlying adversary adjudication. See FCA Rules of Practice and Procedure at 12 CFR 622.18 and 622.19. Section 625.22 provides for the FCA counsel's answer to the application. Section 625.23 governs the applicant's reply to that answer. Section 625.24 permits the presiding officer to order further proceedings if necessary for full and fair resolution of issues arising from the application. Section 625.25 requires the presiding officer to make a recommended decision to the FCA Board on the application and prescribes its minimum required contents. Section 625.26 provides that the FCA Board will make the final decision on an application. As described in § 625.27, the FCA Board's final decision on the application is subject to judicial review. Section 625.28, the final provision in this part, describes how successful applicants can obtain payment of an award.

#### List of Subjects in 12 CFR Part 625

Application, Attorney fees, Delegation, Equal Access to Justice Act, Organization and functions, and Procedures.

For the reasons stated in the preamble, part 625 is proposed to be added to chapter VI of title 12 of the Code of Federal Regulations to read as follows:

#### PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

##### Subpart A—General Provisions

Sec.

- 625.1 Purpose.
- 625.2 Proceedings covered.
- 625.3 Eligibility of applicants.
- 625.4 Standards for awards.
- 625.5 Allowable fees and expenses.
- 625.6 Awards against other agencies.

##### Subpart B—Applicant Information Required

- 625.10 Contents of application.
- 625.11 Net worth exhibit.
- 625.12 Documentation of fees and expenses.
- 625.13 When an application may be filed.

**Subpart C—Procedures for Considering Applications**

- 625.20 Settlement.
- 625.21 Filing and service of documents.
- 625.22 Answer to application.
- 625.23 Reply.
- 625.24 Further proceedings.
- 625.25 Recommended decision.
- 625.26 Board decision.
- 625.27 Judicial review.
- 625.28 Payment of award.

Authority: 5 U.S.C. 504, 12 U.S.C. 2252.

**Subpart A—General Provisions****§ 625.1 Purpose.**

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as "adversary adjudications") before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

**§ 625.2 Proceedings covered.**

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters in appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261–2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made will include only fees and expenses related to covered issues.

(d) Proceedings under this part may be conducted by the FCA Board (Board)

or by the presiding officer (referred to as the "adjudicative officer" in the EAJA), as defined in § 622.2(f) of this chapter. Where the Board presides, the recommended decision under § 625.25 of this part will be omitted and the Board will make a final decision on the application in accordance with § 625.26 of this part.

**§ 625.3 Eligibility of applicants.**

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an award is sought.

The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of \$2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of \$7 million or less (including personal and business interests), and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of \$7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for that applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the

purposes of the EAJA in light of the actual relationship between the affiliated entities.

(1) For purposes of this part, and affiliate is:

(i) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant; or

(ii) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests.

(2) The presiding officer may determine that financial relationships of the applicant other than those described in paragraph (f)(1) of this section constitute special circumstances that would make an award unjust.

(g) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

**§ 625.4 Standards for awards.**

(a) If an eligible applicant prevails over the FCA in an adversary adjudication, or in a significant and discrete substantive portion thereof, the applicant may receive an award for fees and expenses incurred in the adjudication, or portion thereof, unless the position of the FCA over which the applicant prevailed was substantially justified.

(b) The position of the FCA includes:

(1) The position taken by the FCA in the adversary adjudication; and

(2) The action or inaction of the FCA upon which the adversary adjudication is based.

(c) Except as provided in paragraph (d) of this section, the FCA must prove that its position was substantially justified before an award may be denied to an otherwise eligible applicant.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

**§ 625.5 Allowable fees and expenses.**

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed \$75 per hour. No award to compensate an expert witness may exceed \$75 per hour. However, an award also may include the reasonable

expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the FCA shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, audit, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for the preparation of the applicant's case.

#### **§ 625.6 Awards against other agencies.**

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in or in any way is a part of an adversary adjudication before the FCA and that agency's position is not substantially justified, the award or an appropriate portion of the award shall be made against the agency.

### **Subpart B—Applicant Information Required**

#### **§ 625.10 Contents of application.**

(a) An application for an award of fees and other expenses under the EAJA shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed in the adversary adjudication. If the application is made on the basis of significant and discrete substantive issues on which the applicant prevailed, the issues must be specifically identified. The application also shall identify each position of the FCA or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall describe briefly the type and purpose of its organization or

business and state the number of persons employed.

(b) The application shall include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It states that it has 500 employees or fewer and attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) on the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees.

(c) The application shall state the total amount of fees and other expenses for which an award is sought.

(d) The application may include any other relevant matters that the applicant wishes the FCA to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. The application must contain a written verification under oath or under penalty of perjury that the information provided in the application and any supporting documents is accurate.

#### **§ 625.11 Net worth exhibit.**

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 625.3(f) of this part) as of the date when the adversary adjudication was initiated. The exhibit may be in any convenient form that provides full disclosure of the assets and liabilities of the applicant and its affiliates and is otherwise sufficient to demonstrate that the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information supporting its eligibility for an award.

(b) An applicant that objects to public disclosure of information in any portion of the net worth exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled "Confidential Financial Information,"

accompanied by a motion under § 622.11 of this chapter to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the FCA, but need not be served on any other party to the application proceeding. If the presiding officer, or the FCA Board pursuant to § 622.11(e) of this chapter, finds that the information should not be withheld from disclosure, it shall be placed in the public record of the application proceeding. Otherwise, any request to inspect or copy the exhibit shall be treated in accordance with the FCA's procedures regarding release of information (12 CFR part 602).

#### **§ 625.12 Documentation of fees and expenses.**

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, engineering report, test, project, or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Under § 625.24 of this part, the presiding officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed.

#### **§ 625.13 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication, or in a significant and discrete substantive portion thereof, but in no case later than 30 days after the FCA's final disposition of the adversary adjudication.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication is issued or any other complete resolution of the adversary adjudication, such as a

settlement or voluntary dismissal, becomes final and is unreviewable by the FCA, any other administrative body, or the courts.

(c) If review, reconsideration, or appeal is sought or taken of an adversary adjudication decision as to which an applicant believes it has prevailed, application proceedings for any award of fees and other expenses shall be stayed pending final disposition of the underlying controversy.

### Subpart C—Procedures for Considering Applications

#### § 625.20 Settlement.

A prevailing party and the FCA through its counsel may agree on a proposed settlement of an award at any time, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If a prevailing party and the FCA counsel agree on a proposed settlement of an award, the proposed settlement must be submitted to the presiding officer for a recommended decision pursuant to § 625.25 of this part. If it has not been previously filed, the application must be submitted to the presiding officer along with the proposed settlement.

#### § 625.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication (see §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

#### § 625.22 Answer to application.

(a) Within 30 days after service, counsel for the FCA may file an answer to the application, unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceeding under § 625.24 of this part.

(c) If the FCA counsel and the

applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

#### § 625.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.24 of this part.

#### § 625.24 Further proceedings.

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that the further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

#### § 625.25 Recommended decision.

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended

amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary adjudication, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

#### § 625.26 Board decision.

Following filing of the recommended decision with the Board, the Board shall render a final decision on the application. The Board maintains full discretion to uphold, reverse, remand, or alter the recommended decision. The Board may order further proceedings (including those set forth in §§ 622.11 and 622.13 through 622.16 of this chapter) upon request by any party to the application proceeding or on its own initiative, but such proceedings may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

#### § 625.27 Judicial review.

Judicial review of final FCA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

#### § 625.28 Payment of award.

An applicant seeking payment of an award shall submit to the Secretary to the Board a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek judicial review of the decision. The required submission and certification should be sent to: Secretary to the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

(b) The FCA will pay the amount awarded to the applicant within 60 days of receipt of the applicant's submission and certification.

Dated: July 13, 1992.

Curtis M. Anderson,  
Secretary, Farm Credit Administration Board.

[FR Doc. 92-16787 Filed 7-15-92; 8:45 am]

BILLING CODE 6705-01-M

**CONSUMER PRODUCT SAFETY COMMISSION****16 CFR Part 1204****Safety Standard for Omnidirectional Citizens Band Base Station Antennas; Regulatory Flexibility Act; Review of Existing Rules**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of review of existing rules.

**SUMMARY:** In accordance with provisions of the Regulatory Flexibility Act, the Commission is reviewing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas. The purpose of this review is to determine if that standard should be continued without change, amended, or revoked, consistent with the objectives for which it was issued, in order to minimize any economic impact which the standard may have on small entities, including small businesses.

**DATES:** Interested persons are invited to submit written comments on the rule on or before September 14, 1992.

**ADDRESSES:** Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and captioned "Regulatory Flexibility Act Review of CB Antenna Standard."

**FOR FURTHER INFORMATION CONTACT:** Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0980.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) became effective January 1, 1981, and requires Federal agencies to evaluate and take into consideration the economic impact of their rules on "small entities," a term which includes small businesses.

Additionally, section 610 of the RFA (5 USC 610) requires agencies to review those rules issued after January 1, 1981, within ten years of their promulgation. The purpose of the review required by section 610 of the RFA is to determine whether the rules under consideration should be continued in effect without change, amended, or revoked, consistent with the objectives of the agency, to minimize any economic impact which they may have on small entities.

Section 610(c) of the RFA requires agencies to publish notice in the Federal Register of those rules to be reviewed under provisions of the RFA for economic impact on small businesses and other small entities within the next

12 months. Section 610(c) specifies that the notice shall include a brief description of those rules, the need for those rules, and their legal basis, and shall invite public comment on the rules under review. The following information is provided in accordance with provisions of section 610(c) of the RFA.

**Safety Standard for Omnidirectional Citizens Band Base Station Antennas**

Omnidirectional citizens band base station antennas are non-mobile antennas which are used to obtain essentially uniform receiving and transmitting capabilities in all directions. In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Base Station Antennas to reduce risks of electrocution and serious injuries which may result if an antenna contacts an electric power line while the antenna is being erected or removed from its site.

The standard prescribes performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. The standard also requires that instructions for omnidirectional base station antennas must include a statement warning users to keep the antenna away from overhead wires, and to let go of the antenna if it comes near any overhead wires.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas was issued under the authority of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*). That statute authorizes the Commission to issue consumer product safety standards to eliminate or reduce an unreasonable risk of injury associated with a consumer product.

A separate rule codified at 16 CFR part 1402 requires manufacturers and importers of omnidirectional citizens band based station antennas to provide performance and technical data relating to performance and safety of those products by means of labels and instructions. In 1986, the Commission reviewed that rule for economic impact on small businesses as part of a review of 17 rules issued under provisions of the CPSA. The Commission published a notice in the Federal Register of February 19, 1987 (52 FR 5079), to announce the completion of that review and the availability of a report of that activity.

**Review of Standard for Base Station Antennas**

In accordance with provisions of section 610(c) of the RFA (5 U.S.C. 610(c)), the Commission hereby gives

notice that during the next 12 months it will review the requirements of the Safety Standard for Omnidirectional Citizens Band Base Station Antennas codified at 16 CFR part 1204. The Commission invites all interested persons to submit comments on that standard by September 14, 1992.

Dated: July 10, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-16789 Filed 7-15-92; 8:45 am]

BILLING CODE 6355-01-M

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 140**

[FHWA Docket No. 92-7]

RIN 2125-AC96

**Reimbursement; Temporary Matching Fund Waiver**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA is requesting comments on procedures for a temporary waiver of State matching fund requirements as mandated by section 1054 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 1054 allows a State to request an increase in the Federal share (normally 75 to 90 percent) of the construction costs of a qualifying Federal-aid highway project based upon a certification by the Governor of the State that sufficient funds are not available to pay the cost of the non-Federal share of the project. The provisions permit a State to receive up to 100 percent Federal funds on a project for a period through September 30, 1993.

**DATES:** Comments must be submitted on or before August 31, 1992.

**ADDRESSES:** Submit written, signed comments to FHWA docket No. 92-7, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Max I. Inman, Chief, Federal/States Financial Management Branch, (202) 366-2853; or Mr. S. James Wiese, Office of the Chief Counsel, (202) 366-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240, 105 Stat. 1914 (1991), was signed by the President on December 18, 1991. Section 1054 of the ISTEA requires regulations to be established under which a State may request a waiver of its normal share of the construction cost of a qualifying Federal-aid highway project provided the Governor of the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. The regulation provides for an available period for the waiver through September 30, 1993, as well as repayment procedures. As passed, section 1054 provides that:

(a) Waiver of Matching Share.—Notwithstanding any other provision of law, the Federal share of any qualifying project approved by the Secretary under title 23, United States Code, and of any qualifying project for which the United States becomes obligated to pay under title 23, United States Code, during the period beginning on October 1, 1991, and ending September 30, 1993, shall be the percentage of the construction cost as the State requests, up to and including 100 percent.

(b) Repayment.—The total amount of increases in the Federal share made pursuant to (a) for any State shall be repaid to the United States by the State on or before March 30, 1994. Payments shall be deposited in the Highway Trust Fund and repaid amounts shall be credited to the appropriate apportionment accounts of the State.

(c) Deduction From Apportionments.—If a State has not made the repayment as required by (b), the Secretary shall deduct from funds apportioned to the State under title 23, United States Code, in each of the fiscal years 1995 and 1996, a pro rata share of each category of apportioned funds. The amount which shall be deducted in each fiscal year shall be equal to 50 percent of the amount needed for repayment. Any amount deducted under this subsection shall be reapportioned for fiscal years 1995 and 1996 in accordance with title 23, United States Code, to those States which have not received a higher Federal share under this section

and to those States which have made the repayment required by subsection (b).

(d) Qualifying Project Defined.—For purposes of this section, the term "qualifying project" means a project approved by the Secretary after the effective date of this title, or a project for which the United States becomes obligated to pay after such effective date, and for which the Governor of the State submitting the project has certified, in accordance with regulations established by the Secretary, that sufficient funds are not available to pay the cost of the non-Federal share of the project.

**Discussion of Proposed Regulation***Section 140.301 Purpose*

This proposed section states the purpose of subpart C, which is to implement section 1054 of the ISTEA.

*Section 140.303 Applicability*

In proposed § 140.303, the increased Federal share would apply to qualifying projects, as defined in the regulations, which are authorized prior to September 30, 1993, as specified by the statute.

*Section 140.305 Definitions*

This proposed section defines "Governor" to clarify that this provision would be applicable to Puerto Rico and the District of Columbia, as well as the fifty States. The section takes the definition from section 1054 of the ISTEA of "qualifying project." Title 23 U.S.C. 106(a) is the provision for approval of plans, specifications, and estimates, 23 U.S.C. 117 is the certification acceptance provision, and 23 U.S.C. 133(e) is the provision for obligating Surface Transportation Program funds.

*Section 140.307 Submission of Certification by Governor*

This proposed section contains the statutory requirement for certification by the Governor which would be the initial step in requesting an increased Federal share. The certification must state that sufficient funds are not available to pay the cost of the non-Federal share of the project or projects. The format of the certification is not prescribed by this proposed regulation, thus providing the Governor with flexibility as to the type of certification best suiting the State's situation.

*Section 140.309 Request and Approval of Increase in Federal Share*

This section would establish the basic procedures for requesting an increase in the Federal share which vary little from

the regular procedures for requesting Federal participation in a project. This section also clarifies that the amount waived is the amount of costs incurred by the State and reimbursed by FHWA during the waiver period. The waiver does not apply to the amounts obligated during the period. This is evident in the ISTEA which applies the waiver to "construction cost as the State requests." It further states that the increased Federal share shall be "repaid" and "deposited in the Highway Trust Fund." These terms refer to expenditures.

The FHWA recognizes that some qualifying projects will not be completed prior to September 30, 1993, at which time the State will be required to match its share of project costs. Paragraph (b) of this proposed section provides the State with an option to request an obligation of Federal funds, only on the increased Federal share, based on the amount of costs the State expects to incur prior to September 30, 1993, instead of the total project costs. The State is still required to fully obligate the regular Federal share. For example, the State requests 100 percent Federal participation on an Interstate project (normally 90 percent participation) with an estimated cost of \$10 million. Federal funds of \$9 million must be obligated for the regular Federal share. If the State estimates that only 50 percent of the project costs will be incurred by September 30, 1993, it may request that only 50 percent of the increased Federal share amount be obligated. In this case, instead of obligating \$1 million of Federal funds on the increased Federal share, only \$500,000 would be obligated. The State would still be reimbursed for 100 percent of project costs incurred until September 30, 1993.

Paragraph (c) of this proposed section requires a statement to be included on the project agreement, PR-2, submitted by the State which establishes the Federal share and amount of Federal funds requested by the State. The statement also establishes that claims paid after September 30, 1993, shall be at the regular Federal pro rata share.

Paragraph (d) of this proposed section would allow the State to use its normal billing procedures to claim reimbursement for the increased Federal share. The State would be required to pro rate the costs incurred to the regular Federal share, the increased Federal share, and the non-Federal share, if any. This is necessary for the FHWA to account for the amount reimbursed on the increased Federal share.

**Section 140.311 Repayment of the Increased Federal Share**

This proposed section reiterates the statute's requirements for repaying the increased Federal share. The State would have the option of repaying the increased Federal share paid to the State or having that amount deducted from its apportionments.

**Rulemaking Analyses and Notices****Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism assessment.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 140**

Accounting, Grant program—transportation, Highways and roads.

Issued on: July 8, 1992.

T. D. Larson,  
Administrator.

The FHWA proposes to amend 23 CFR part 140, by adding Subpart C, Temporary Matching Fund Waiver, to read as follows:

**PART 140—REIMBURSEMENT**

1. The authority citation for 23 CFR part 140 is revised to read as follows:

Authority: 23 U.S.C. 101(e), 114(a), 120, 121, 122 and 315; Sec. 1054, Pub. L. 102-240, 105 Stat. 2001; 49 CFR 1.48(b).

2. Part 140 is amended by adding a new subpart C to read as follows:

**Subpart C—Temporary Matching Fund Waiver**

Sec.

- |         |  |
|---------|--|
| 140.301 | Purpose.   |
| 140.303 | Applicability.                                     |
| 140.305 | Definitions.                                       |
| 140.307 | Submission of certification by Governor.           |
| 140.309 | Request and approval of increase in Federal share. |
| 140.311 | Repayment of the increased Federal share.          |

**Subpart C—Temporary Matching Fund Waiver****§ 140.301 Purpose.**

The purpose of this regulation is to prescribe procedures for administering section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991, providing for a temporary waiver of State matching fund requirements.

**§ 140.303 Applicability.**

The provisions of this subpart are applicable to qualifying projects as defined in § 140.305 during the period October 1, 1991, and ending September 30, 1993.

**§ 140.305 Definitions.**

As used in this subpart:

**Governor** means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

**Increased Federal share** means the portion of the approved Federal share which is in excess of the regular Federal share that would have been approved if a matching fund waiver had not been requested.

**Qualifying project** means a project approved after December 18, 1991, under 23 U.S.C. 106(a), or a project for which the United States becomes obligated to pay after December 18, 1991, under 23 U.S.C. 117 or 23 U.S.C. 133(e) for which the Governor has submitted a certification described in § 140.307.

**§ 140.307 Submission of certification by Governor.**

The Governor of the State shall submit a certification in writing to the Federal Highway Administration (FHWA) Division Administrator certifying that sufficient funds are not available to pay the cost of the non-Federal share of a qualifying project, taking into account all State and local funds that are available for obligation on Federal-aid highway projects. Funds encumbered or committed to other existing programs are considered unavailable for matching purposes.

**§ 140.309 Request and approval of increase in Federal share.**

(a) The State may submit a request in writing to the FHWA Division Administrator for an increase in the Federal share of a qualifying project up to and including 100 percent at the time the State submits a request for project approval or obligation. The request shall specify the Federal pro rata share, the amount of regular Federal funds and the amount of the increased Federal share desired.

(b) To maximize the obligation of Federal funds, the amount obligated for the increased Federal share may be based on the estimated costs to be incurred by the State before September 30, 1993, instead of the total estimated project costs.

(c) When submitting the project agreement, Form PR-2, pursuant to § 630.304 of this title, the State shall include in the agreement the following provision:

The Federal-aid participation is increased to \_\_\_\_\_ percent for reimbursement claims paid on or before September 30, 1993, in accordance with Public Law 102-240, section 1054. The additional Federal funds requested total \$\_\_\_\_\_. Claims paid after September 30, 1993, shall be at the regular Federal pro rata share of \_\_\_\_\_ percent.

(d) The State may claim reimbursement for the increased Federal share as a part of its normal billing procedures. Participating costs incurred by the State on qualifying projects shall

be charged on a pro rata basis to the regular Federal share, increased Federal share, and non-Federal share, if any.

**§ 140.311 Repayment of the increased Federal share.**

(a) The State shall repay the amount of the increased Federal share made pursuant to this subpart on or before March 30, 1994. If such repayment is not made by the State, the FHWA shall make the deductions as provided in paragraph (c) of this section.

(b) The FHWA shall deposit all repayments made by a State under paragraph (a) of this section to the Highway Trust Fund and shall credit the repayments to the appropriate apportionment accounts of the State.

(c) If the total amount of the increased Federal share is not repaid on or before March 30, 1994, deductions shall be made from the State's fiscal year 1995 and fiscal year 1996 apportionments. The total amount deducted shall be the amount reimbursed to the State on the increased Federal share of all qualifying projects. In each of the fiscal years, one-half of the total deduction shall be made from the following categories on a pro rata basis: National Highway System, Surface Transportation Program, Interstate Construction, Interstate Substitute, Interstate Maintenance Program, Bridge Program, and Congestion Mitigation and Air Quality Improvement Program.

(d) The total amount deducted in accordance with paragraph (c) of this section shall be reapportioned to those States which did not receive an increased Federal share under this subpart and to those States which have made repayment under this section. These reapportioned funds shall be credited to the same categories of funds on which the deductions occurred.

(e) Appropriate adjustments will be made to each State's obligation limitation to reflect the changes in apportioned funds required by paragraphs (c) and (d) of this section.

[FR Doc. 92-16689 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-22-M

**23 CFR Part 750**

[FHWA Docket No. 92-22]

RIN 2125-AC99

**Removal of Nonconforming Signs**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking (NPRM) and closing of docket.

**SUMMARY:** The FHWA is withdrawing an NPRM published on May 8, 1992, at 57 FR 19824. The May 8 NPRM noted that the recently enacted Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended 23 U.S.C. 132 by making highway trust funds apportioned under 23 U.S.C. 104 available for the Federal share of just compensation to be paid to sign owners and landowners upon the removal of nonconforming signs. Consequently, the States were once again required to purchase nonconforming signs to comply with the Highway Beautification Act of 1965.

On June 22, 1992, however, the Congress further amended 23 U.S.C. 131(n), effectively giving the States the discretion as to whether to use highway funds for the removal of nonconforming signs. As a result, a portion of a March 6 notice (57 FR 8167) and the NPRM no longer reflect current law, as there can be no binding guidelines or deadlines set by the FHWA for the States to follow. The NPRM is therefore withdrawn. Also published in the Notices section of today's Federal Register is a notice rescinding a portion of the March 6 notice.

**DATES:** Withdrawal of NPRM effective on June 22, 1992.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Roger Kezar, Chief, Policy Development Branch, Office of Right-of-Way, HRW-11, (202) 366-2021; or Mr. Robert J. Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** On March 6, 1992, the FHWA published a notice in the Federal Register entitled "Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising." The notice described the impact of section 1046 of the ISTEA, Public Law 102-240, 105 Stat. 1914, upon the States' existing procedures for effective control of outdoor advertising, which were instituted in accord with regulations previously issued by the FHWA in 23 CFR 750.705. Section 1046(a) of the ISTEA amended 23 U.S.C. 131(m), making funds apportioned under 23 U.S.C. 104 available to participate in the cost of outdoor advertising control. By this amendment, highway trust funds were now available for the removal of nonconforming signs. In the notice, the FHWA stated that, as a consequence of the ISTEA making funds available for participation, it believed the ISTEA required the States to begin immediate

removal of nonconforming signs and to make reasonable progress in completing their removal expeditiously. The notice set a two year flexible goal for the removal of nonconforming signs and advised the States to submit plans for such removal by June 18, 1992. The notice also dealt with the removal of illegal signs and the prohibition of signs on scenic byways.

On May 8, 1992, the FHWA issued an NPRM to set forth criteria that the States should consider in developing their plans for the acquisition and removal of nonconforming signs. In addition, the FHWA wanted to establish a definite deadline for sign removal, with a procedure for extending the time limit if States were unable to meet it. Several options for implementing the removal of the remaining nonconforming signs were listed, and comments were solicited from all interested parties. As of this date, the FHWA has received numerous comments upon the options.

The need for the FHWA's rulemaking effort was obviated, when, on June 22, 1992, Public Law 102-302, 106 Stat. 248, was signed into law. Section 104 of Public Law 102-302 amended 23 U.S.C. 131(n), to make clear that while funds apportioned to a State under 23 U.S.C. 104 could be used for the acquisition costs of nonconforming signs, States are under no obligation to use such highway funds for nonconforming sign removal. Consequently, the May 8 NPRM, found at 57 FR 19824, which would have resulted in a rule requiring the establishment of a specific timetable for the removal of the remaining 92,000 nonconforming signs, is no longer appropriate and is hereby withdrawn and the docket closed.

In consideration of the foregoing, the March 6 notice, found at 57 FR 8167, is still in effect as regards the prohibition of signs on scenic byways and removal of illegal signs. That part of the March 6 notice dealing with the removal of nonconforming signs, however, is rescinded in a notice appearing in the Notices section of today's Federal Register. States are still required to maintain effective control of outdoor advertising pursuant to 23 CFR Part 750, and those States deciding to use highway funds for nonconforming sign removal should give careful consideration to the recommended priority of removals found at 23 CFR 750.304(a).

A regulatory information number [RIN] is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and

October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 750

Advertising, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Signs and symbols.

(23 U.S.C. 131 and 315; Sec. 104 of Pub. L. 102-302, 106 Stat. 249)

Issued on: July 10, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-16768 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 202

RIN: 1010-AB57

#### Valuation of Gas Production Under Unitization or Communitization Agreements

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Advance notice of proposed rulemaking, extension of public comment period.

**SUMMARY:** The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Advance Notice of Proposed Rulemaking which was published in the *Federal Register* on June 1, 1992, (57 FR 23068). In response to requests for additional time, MMS will extend the comment period from July 16, 1992, to August 17, 1992.

**DATES:** Comments must be received on or before August 17, 1992.

**ADDRESSES:** Written comments may be mailed to the Minerals Management Service, Mail Stop 3910, Denver, Colorado, 80225-0185, Attention: Dennis Whitcomb.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432.

Dated: July 10, 1992.

Daniel Talbot,

Deputy Assistant Secretary for Land and Minerals Management.

[FR Doc. 92-16796 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-MR-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 110

[CGD7 91-60]

#### Anchorage Regulation; Port Everglades, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish two anchorage grounds off Port Everglades, Florida. The Florida State Department of Natural Resources, Port Everglades Authority, and the Ocean Research Institute have requested that the Coast Guard establish these anchorage grounds off the coast. Anchoring regulations are also being proposed at this time. The primary purpose of the federally designated anchorage grounds is to encourage large vessels to anchor within the anchorage grounds' boundaries so as to avoid causing reef damage with their anchors.

**DATES:** Comments must be received on or before August 31, 1992.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. First Ave., Brickell Plaza Bldg., Miami, FL 33131-3050. The comments will be available for inspection and copying at room 406 of the Seventh Coast Guard District. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander H. Van Houten, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536-5621.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-60) and the specific section of this rule to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments, but plans no public hearing. Requests for a public hearing may be sent to the address under **ADDRESSES**. If it is determined that the

opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

#### Drafting Information

The drafters of this notice are Lieutenant Commander H. Van Houten, project officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

#### Discussion of the Regulation

Accordingly to research conducted by the Ocean Research Institute, 614 SE. 19th St., Ft. Lauderdale, Florida, the "3rd" reef off Ft. Lauderdale is part of a worldwide shelf edge reef system built by shallow water elkhorn coral several thousand years ago. Sea level has subsequently risen and the shallow water coral have died and have been covered by deep water coral species. Thirty-one species of stony coral have been identified on the reef. Evidence exists showing damage to the reefs caused primarily by anchors of large ocean going vessels.

The boundaries for the proposed anchorage grounds were originally developed by the Ocean Research Institute, the Florida Department of Natural Resources, the Port Everglades Authority, and the Coast Guard. The boundaries were refined based on an April 1992 side-scan sonar survey conducted by the Marine Resources Section of the Broward County Office of Natural Resource Protection. This survey shows neither natural nor artificial reefs lie in the proposed anchorage grounds.

#### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion (CE) in accordance with its

own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Since the proposed anchorage grounds are located over nonsensitive ocean bottom for the purpose of avoiding reef damage caused by vessels' anchors, the effects on the environment are expected to be beneficial.

#### Federalism

This rule making has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule making does not have sufficient federalism implications to warrant the preparation of a Federalism Statement.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.186 is added to read as follows:

#### § 110.186 Port Everglades, Florida

(a) *The anchorage grounds*—(1) *Anchorage A.* A rectangular area the center of which is approximately two miles northeast of the entrance to Port Everglades with the following coordinates:

Latitude	Longitude
26°07'46" N	80°04'51" W
26°07'46" N	80°05'01" W
26°06'20" N	80°05'01" W
26°06'20" N	80°05'10" W

(2) *Anchorage B.* The area to the eastward of a line connecting the points 26°07'16"N/80°04'38"W and 26°7'56"N/80°04'34"W; to the southward of a line bearing 090 from the point 26°7'56"N/80°04'34"W; and northward of a line bearing 090 from the point 26°07'16"N/80°04'38"W.

(b) *The regulations.* (1) Vessels in the Atlantic Ocean in the vicinity of and awaiting berthing space at Port

Everglades, shall only anchor within the anchorage area hereby defined and established, except in cases of great emergency.

(2) Vessels anchoring under circumstances of great emergency outside the anchorage area shall be shifted to new positions within the anchorage area immediately after the emergency ceases.

Dated: June 30, 1992.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander,  
Seventh Coast Guard District, Acting.

[FR Doc. 92-16812 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 165

[CGD7 92-41]

#### Anchorage Regulation; Kings Bay, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal by the U.S. Navy to minimize the effect of passing vessels' wakes on U.S. Navy ships moored at the King's Bay Naval Submarine Base Magnetic Silencing Facility, Floating Dry Dock and Tender Refit Moors. At the U.S. Navy's request, the Coast Guard established a regulated navigation area in 1984 to minimize the effects of wakes on the drydock ARDM 1 OAKRIDGE. Since then, the construction of the Magnetic Silencing Facility and the related activities associated with it have increased the size the regulated navigation area which the U.S. Navy believes is necessary to protect workers. The proposed revision will extend by approximately 700 yards the southern boundary of the bare steerageway regulated navigation area in the vicinity of the entrance to King's Bay, Georgia.

**DATES:** Comments must be submitted on or before September 14, 1992.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. First Ave., Brickell Plaza Bldg., Miami, FL 33131-3050. The comments will be available for inspection and copying at room 406 of the Seventh Coast Guard District. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander H. Van Houten, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536-5621.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD7-92-41, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned.

##### Drafting Information

The drafters of this notice are Lieutenant Commander H. Van Houten, project officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal office.

##### Discussion of the Regulation

The U.S. Navy requested the original rule to minimize the effects of wakes on the drydock ARDM-1 OAKRIDGE, moored in King's Bay, Georgia, 500 yards from the Atlantic Intracoastal Waterway. Wakes caused vessels inside the drydock to shift on their keelblocks. The regulation established a bare steerageway speed zone in the vicinity of King's Bay and Cumberland Sound. The restriction eliminated a substantial hazard to workers caused by vessel movement in the drydock. Since the original rule was adopted, the U.S. Navy has constructed a Magnetic Silencing Facility immediately to the south of the ARDM-1 OAKRIDGE. The U.S. Navy believes that the wakes of passing vessels have a similar effect on vessels moored at this facility. Extending the regulated navigation area will provide a safer work environment for these personnel.

The present regulated navigation area is enclosed within a line connecting the following points

Latitude	Longitude
30°47'58.5" N	081°29'24.5" W
30°46'44.0" N	081°29'18.4" W
30°47'35.0" N	081°30'16.5" W

and thence to the point of beginning.

The proposed zone would be enclosed within a line connecting the following points:

Latitude	Longitude
30°48'00.0" N	081°29'24.0" W
30°46'19.5" N	081°29'17.0" W
30°47'35.0" N	081°30'16.5" W

and thence to the point of beginning.

The original Notice of Proposed Rule Making was published in the *Federal Register* on May 17, 1984, and the Final Rule became effective on December 10, 1984. A Final Rule to more accurately describe the boundaries of the Regulated Navigation Area was published in the *Federal Register* on May 12, 1989 and effective the same date.

#### Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Environmental Impact

The Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The Coast Guard NEPA Manual (COMDTINST M16475.1B) specifically defines "actions performed as a part of Coast Guard operations to carry out statutory authority in the area of maritime safety" as being categorically excluded from further environmental documentation.

#### Federalism

This rule making has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule making does not have sufficient federalism implications to warrant the preparation of a Federalism Statement.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

#### Final Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is revised as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-8, and 160.5.

2. Section 165.730 is revised to read as follows:

#### § 165.730 King's Bay, Georgia—Regulated Navigation Area.

Vessels transiting in the water bounded by the line connecting the following points must travel no faster than needed for steerageway:

Latitude	Longitude
30°48'00.0" N	081°29'24.0" W
30°46'19.5" N	081°29'17.0" W
30°47'35.0" N	081°30'16.5" W

and thence to the point of beginning.

Dated: June 25, 1992.

Robert E Kramek,

Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 92-16766 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-14-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Chapter I

[AD-FRL-4154-8]

#### Intent to Form an Advisory Committee To Negotiate a Proposed Regulation for Architectural and Industrial Maintenance Coatings Under Section 183(e) of the Clean Air Act as Amended, and Announcement of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent.

**SUMMARY:** The EPA is considering establishing an advisory committee to negotiate issues for the purpose of reaching a consensus that can serve as the basis of a notice of proposed rulemaking under section 183(e) of the Clean Air Act (the Act) as amended by the Clean Air Act Amendments of 1990 (CAAA). The advisory committee would be created under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act of 1990 (NRA), and would consist of representatives of the interests significantly affected by the outcome of the rule.

This notice describes the subject, scope and issues underlying the regulation that may be negotiated. It also lists the interests that the EPA believes will be significantly affected by the rule, and the persons or entities proposed to represent such interests in any negotiations.

The EPA requests comments on: (1) Whether negotiations are appropriate and feasible for development of the proposed regulation described, (2) whether the EPA has correctly and comprehensively identified the issues underlying the regulation and the interests that will be significantly affected by it, and, (3) whether the persons proposed for the advisory committee would adequately represent those interests. Any person or entity that believes its interests would not be adequately represented by those members proposed for the advisory committee may submit an application for membership in accordance with the procedures described below.

The EPA also announces that it will conduct a public meeting on the proposed use of negotiations for the regulation. The meeting will explore the feasibility of negotiating the proposed rule and the issues to be addressed by the advisory committee. Any person interested in the negotiation of the proposed rule is encouraged to attend.

**DATES:** The EPA conduct a public meeting concerning this notice on July 28-29, 1992, in Raleigh, NC. On July 28, the meeting will start at 10:30 a.m. and end at 6 p.m. On July 29, the meeting will start at 8:30 a.m. and run until completion, but no later than 4 p.m. Comments on the issues raised by this notice and any applications for membership on the advisory committee must be received by August 17, 1992.

**ADDRESSES:** The public meeting will be held at the Raleigh Marriott—Crabtree Valley, 4500 Marriott Drive, Raleigh, NC 27612, (919) 781-7000.

Comments pertaining to the regulations should be submitted (in duplicate if possible) to Air Docket Section, the EPA, Attention Docket #A-92-18, 401 M Street SW., Washington, DC 20460. A copy should also be sent to Ellen Ducey, the EPA, MD-13, Research Triangle Park, NC 27711.

Docket #A-92-18 contains the materials relevant to this notice and may be inspected at room 1500M, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC between 8:30 a.m. and noon, and 1:30 and 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:**

For questions regarding the establishment of the advisory committee and associated administrative matters, contact: Chris Kirtz, Director, Consensus and Dispute Resolution Program, Regulatory Management Division, the EPA (PM-223Y), 401 M Street, SW., Washington, DC 20460, (202) 260-7565.

For questions regarding the regulation or underlying issues, contact: Ellen Ducey at the previously provided address or by phone, (919) 541-5408.

**SUPPLEMENTARY INFORMATION:****I. The EPA's Regulatory Negotiation Project**

The EPA established the Regulatory Negotiation Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations.

Negotiations are conducted through advisory committees chartered under the FACA. The goal of each advisory committee is to attempt to reach consensus on language or issues which can be used as the basis of a proposed rule. All procedural requirements of the Administrative Procedure Act and other applicable statutes apply.

The EPA has developed evaluation criteria for judging the negotiation potential of items based upon its experience with regulatory negotiations. Under the EPA's selection criteria, to qualify, an item must:

- Be planned for proposal;
- Have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating;
- Present a limited number of related issues for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to reaching consensus.

Negotiations conducted to date have aided the Agency in better defining issues and in crafting better regulations. Regulatory negotiations have included:

1. Nonconformance penalties under the CAA; Final Rule: August 30, 1985.
2. Emergency Pesticide Exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Final Rule: January 15, 1986.
3. Farmworker Protection Standards for Agricultural Pesticides under FIFRA; Proposed rule: July 8, 1988.
4. Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986; Final Rule: October 30, 1987.
5. New Source Performance Standards for Woodburning Stoves under the CAA; Final Rule: February 26, 1988.

6. Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984; Final Rule: July 26, 1988.

7. Minor Permit Modifications under the Resource Conservation and Recovery Act; Final Rule: September 1988.

8. Control of Fugitive Emissions of Hazardous Air Pollutants for Equipment Leaks: Agreement in Principle: December 1990.

9. Coke Oven Battery Emissions: committee currently completing final deliberations.

The Program Evaluation Division of the EPA's Office of Policy, Planning and Evaluation conducted an assessment of the regulatory negotiations program in December 1986. The study confirmed that negotiation is especially appropriate in the development of rules involving the resolution of a limited number of related issues which do not include issues of fundamental value or extremely controversial national policy. The study further concluded that:

- Negotiated rules can produce sound and pragmatic environmental regulations that meet statutory requirements efficiently.
- Negotiated rules are also more likely to be acceptable to the impacted industries, the public interest sector, and State and local governments involved in developing them.
- Negotiation may also result in earlier implementation and compliance, and reduce the time it takes to proceed from proposed to final rulemaking.

Experience shows that the benefits to all parties from regulatory negotiation and other consensus-based processes

**II. The Negotiated Rulemaking Act of 1990**

Congress enacted the Negotiated Rulemaking Act (NRA) to provide a framework for the conduct of negotiated rulemaking and to encourage agency use of the process when it enhances informal rulemaking. Modeled in large part on the EPA's own regulatory negotiations process, the NRA provides that an agency may establish a negotiated rulemaking advisory committee to negotiate and develop a proposed rule where the agency determines that use of the negotiated rulemaking procedure is in the public interest. In determining if negotiation is appropriate, agencies are to consider, among other things, whether:

- There are a limited number of identifiable interests that will be significantly affected by the rule.
- There is a reasonable likelihood they can convene an advisory committee

with a balanced representation of individuals who can adequately represent the identified interests and who are willing to negotiate in good faith to reach consensus on the proposed rule;

- There is a reasonable likelihood that the advisory committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule; and
- The agency, consistent with applicable law, will use the consensus of the advisory committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

The NRA authorizes use of independent conveners to assist the agency in identifying the interests that will be significantly affected by a rule. Through discussions with representatives of those interests, the conducer assesses the feasibility and appropriateness of using the negotiated rulemaking approach. The conducer then reports his or her findings to the agency.

If, after considering a conducer's report or conducting its own assessment, the agency wants to proceed with negotiated rulemaking, it publishes a notice in the *Federal Register* describing the subject and scope of the proposed rule, the issues and interests involved, and the persons or entities that it proposes to include on the negotiated rulemaking advisory committee. The purpose of the notice is to give members of the public a chance to comment on use of negotiated rulemaking for the proposed rule, the agency's identification of the issues and interests involved, and the proposed membership of the advisory committee. The NRA provides for a 30-day period during which the public may submit any comments and applications for membership on the advisory committee. Today's notice fulfills this purpose and begins the 30-day comment period.

The agency proposing to use negotiated rulemaking must make a final determination on whether it is feasible and appropriate to do so in light of any comments received. Notice of the agency's decision is to be published in *Federal Register* and sent to anyone applying for advisory committee membership. The EPA will issue a notice either establishing the advisory committee or announcing why it has elected not to establish the advisory committee and not to negotiate the

regulation after the public meeting and a review of the public comments received.

The procedures applicable to an advisory committee are described in a later section of this notice.

### III. Subject and Scope of Rule Proposed for Negotiation

The subject of the rule proposed for negotiation is the reduction of volatile organic compound (VOC) emissions from architectural and industrial maintenance (AIM) coatings. These coatings are applied to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. Industrial maintenance coatings are one of the many subcategories of architectural coatings for such substrates as steel, wood, and masonry. The scope will include consideration of traditional VOC limitations, market-based approaches, and phased-in approaches.

#### A. Statutory Provisions

Title I, section 183(e) of the Act requires the EPA to conduct a study of emissions of VOC into the ambient air from consumer and commercial products (CCP's). The study is to determine the potential of these CCP's to contribute to ozone levels, and to establish criteria for regulating CCP's or classes or categories thereof. Upon completion of the study, but not later than 3 years after enactment of the CAAA (i.e., by November 1993), the EPA must submit a report to Congress that documents the results of the study. Based on this report, the EPA must list those CCP's which account for 80 percent of the VOC emissions on a reactivity-adjusted basis, divide the list into four groups, and regulate one group every 2 years until all four groups are regulated.

The AIM coatings are considered CCP's, and are therefore subject to the requirements of section 183(e). Based on currently available data, the EPA estimates that on a reactivity-adjusted basis, using the Agency's current definition of VOC that excludes negligibly reactive compounds, AIM coatings represent 20 percent of the VOC emissions from CCP's. Based on this estimated contribution, the regulation is being developed concurrent with information gathering for the study and report to Congress.

#### B. Anticipated Environmental Impact

Based on available data, the EPA estimates that emissions from AIM coatings contribute approximately 400,000 tons of VOC emissions per year nationwide. It is one of the largest identifiable, Federally unregulated sources of VOC emissions. This national

rule will achieve a reduction in these VOC emissions through requirements that will cause a change in the mix of products available for use in the market.

#### C. Anticipated Economic Impact

A national rule is expected to promote uniformity in regulations across the country. A national regulation could reduce the burden on the paint industry that results from a multitude of divergent State rules, that is, to reformulate for specific regions, inventory its products separately, keep different records, and label product lines differently. The types of costs which may result from this rule include those associated with reformulation and changes in product demand. The level of impact will depend in part on the form of the standard. The data necessary to quantify the economic impact are expected to be gathered and discussed during the regulatory negotiation process.

#### D. Underlying Issues

The underlying issues in developing the regulation include the following: means to promote uniformity, administrative requirements (labeling, recordkeeping), economic considerations including impacts upon small businesses, consideration of hazardous air pollutant emissions, and performance considerations.

### IV. Interests Significantly Affected by Proposed AIM Rules and Persons Proposed To Represent Those Interests

The identified interests are industry representatives, consumers, Federal Agencies, State and local representatives of air pollution agencies, environmental groups, and labor. The EPA proposes the following named persons and entities as members of the advisory committee if the Agency decides to proceed with the negotiations. These persons and entities have indicated their tentative willingness to participate:

#### Industry Representatives

Bernie Appleman, Executive Director, Steel Structures Painting Council  
Earle K. Borman, Jr., Sr. Vice President, L&F Products  
Jack J. Bracco, Market Development, Architecture & Industrial Maintenance Coatings, Miles, Inc.  
J. Andrew Doyle, Executive Director, National Paint and Coatings Association  
Marcel Gaschke, Group Marketing Manager, CIBA-GEIGY Corporation  
Madelyn Harding, Administrator, Product Compliance and

Registrations, The Sherwin-Williams Company

Al Heitkamp, Section Leader, Cargill, Inc.

Ned B. Kisner, President, Triangle Coatings, Inc.

Robert J. Klepser, Group Leader, Carboline Company

Carl Minchew, Division Operations Manager, Benjamin Moore & Co.

John Prinz, Vice President Research and Development, Sinclair Paint Company

Nick Roman, Technical Service Manager, Rohm and Haas Co.

Jim Sainsbury, Manager, Product Regulation, The Glidden Company

Christine Stanley, Ameron Protective Coatings

William Stewart, Director, Regulatory Affairs, The Valspar Corporation

Robert Wendoll, Chairman, Environmental, Legislative and Regulatory Advocacy Program, Dunn-Edwards Corp.

Richard Williamson, Executive Vice President, Trinity Coatings Co.

#### Consumers

Vincent R. Sandusky, Executive Vice-President, Painting and Decorating Contractors of America

#### Federal Agencies

Bill Feist, Forest Products Laboratory, Department of Agriculture

Todd Posey, Chief of Commodity, Management Branch, General Services Administration

Tim Race, Chemist, U.S. Army Corps of Engineers

John Peart, Research Chemist, Federal Highway Administration

John Seitz, Director, Office of Air Quality Planning and Standards, the EPA

#### State and Local Representatives of Air Pollution Agencies

S. William Becker, Executive Director, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials

Dan Belik, Enforcement Program Supervisor, Rule Development, Bay Area Air Quality Management District (BAAQMD)

Ron Friesen, Assistant Division Chief, California Air Resources Board, Stationary Source Division

Robert Irvine, Senior Environmental Engineer, SIP Revision Unit, State of Michigan, Department of Natural Resources, Air Quality Division

Bob Warland, New York Regional Air Pollution Control Engineer, Region IV, DEC Regional Headquarters

### Environmental Groups

David Hawkins, Senior Attorney,  
Natural Resources Defense Council  
Joel Schwartz, Staff Scientist, Coalition  
for Clean Air  
Ronald White, Deputy Director,  
National Programs, American Lung  
Association

### Labor

Colleen Baker, Director of Health &  
Safety, Painters & Allied Trades

### V. Selection as Potential Negotiation Candidates

The EPA believes that the AIM proposed rule may be appropriate for development through negotiation. With the help of three conveners, the EPA has made a preliminary inquiry of potential parties and representatives of identified interests to determine if the regulation satisfies the applicable selection criteria for negotiation. On the basis of this inquiry, the EPA believes that the regulation meets the selection criteria and that negotiations can be successful. Affected interests are relatively small in number and the initial meetings and conveners' interviews indicate that an appropriate balance and mix of groups will be willing to participate in good faith. The Agency also believes that a committee comprised of representatives of these groups can reach consensus and that the EPA can issue a proposed regulation on a timely basis. The EPA has adequate resources to devote to the negotiations, and, consistent with applicable law, it would use the consensus of the committee as the basis of the proposed rule. In sum, the EPA believes the regulation of AIM coatings is an appropriate and feasible subject to consider for negotiation. The Agency requests comments on whether the applicable criteria for use of negotiated rulemaking are met.

### VI. Formation of the Advisory Committee

#### A. Procedure for Establishing a Negotiated Rulemaking Advisory Committee

Under the NRA, the EPA must comply with the FACA in establishing and administering an advisory committee, except as otherwise provided by the NRA. Under the FACA, the EPA can only establish an advisory committee, if, after consultation with the Administrator of the General Services Administration (GSA), the Agency determines that establishment of the committee is in the public interest in connection with the performance of duties imposed on the EPA by law. Timely notice of the Agency's

determination must also be published in **Federal Register**. Moreover, the advisory committee can meet or take action only after a charter describing its objectives, duties, and duration has been filed with the Congressional standing committees having legislative jurisdiction over the EPA, and with the Library of Congress.

As described earlier, the NRA requires the EPA to publish this Notice of Intent to form an advisory committee and to provide a 30-day period during which comments and applications for advisory committee membership can be submitted. In light of the comments and applications received, the EPA will make a final determination as to whether to form an advisory committee and, if so, its membership. Additionally, the EPA will satisfy the requisite CSA consultation requirements if the choice is made to proceed with a negotiated rulemaking process. As mentioned above, the EPA will publish a notice of that final determination in the **Federal Register**.

#### B. Participants

The EPA estimates that the advisory committee will consist of approximately 30 members. A previous section of this notice identified the interests that the EPA believes will be significantly affected by the rule and the persons and entities proposed to represent those interests. One purpose of this notice is to solicit comments on whether the regulation the EPA is developing would substantially affect interests not identified or not adequately represented by the proposed participants. The EPA does not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, the committee as a whole must reflect a proper balance and mix of interests.

#### C. Requests for Representation

Any person who may be significantly affected by the proposed rule discussed in this notice, and who believes that their interests will not be adequately represented by the persons or entities listed in Section III of this notice, may apply for membership on the advisory committee. As an alternative, such person may nominate another person for membership on the advisory committee. An application for membership or nomination must include the following:

1. The name of the applicant or nominee and a description of the interest(s) such person would represent;
2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent;

3. A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule or guideline under consideration; and

4. The reasons that the persons specified in Section III do not adequately represent the interests of the person submitting the application or nomination.

Send applications or nominations to Chris Kirtz, Director, Consensus and Dispute Resolution Program, Regulatory Management Division, Environmental Protection Agency (PM-223Y), 401 M Street SW., Washington, DC 20460, (202) 260-7565. Applications or nominations must be submitted on or before August 17, 1992.

The EPA will fully consider all applications or nominations. The decision to add a person or entity to the committee will be based on whether an interest of that person or entity will be significantly affected by the proposed rules or guidelines, whether such interest is already adequately represented on the committee, and, if not, whether the applicant or nominee would adequately represent such interest. If the EPA decides to proceed with the negotiated rulemaking, it will send a copy of the committee membership list to anyone who submitted an application for committee membership.

#### D. Public Meeting on Establishing the Committee

The EPA will conduct a public meeting on establishing an advisory committee, as discussed above. The purpose of this meeting is to consider: The appropriateness and feasibility of developing this regulation by negotiation; the issues the advisory committee will need to address; the optimal order in which to address the issues; data and information needs; the timing of any future meetings; operational committee ground rules; and committee membership. Anyone interested in the proposed negotiations is encouraged to attend.

#### E. Tentative Schedule

If the EPA decides to establish the advisory committee, and if its charter is approved, the Agency intends to hold the committee's first meeting in September 1992 in Raleigh, NC or Washington, DC. The EPA will announce the exact time, location, and starting and ending time of this meeting in the **Federal Register**. At this meeting, participants will begin to address items identified in the July meeting.

Subsequent meetings of the committee and any workgroups formed will be held on a schedule to be determined by the committee. As required by the FACA, the EPA will publish timely notice of the meetings in the *Federal Register*. The meetings will be open to the public, and interested persons will be permitted to file statements with the committee.

The EPA intends to hold monthly meetings so that consensus may be reached as quickly as possible.

#### VII. Negotiation Procedures

The following procedures and guidelines will apply to the committee, if formed, unless they are modified as a result of comments received on this notice or during the negotiating process.

##### A. Facilitator

The EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to chair negotiating sessions; to help the negotiation process run smoothly; and to help participants define and reach consensus.

##### B. Good Faith Negotiation

Committee participants must be willing to negotiate in good faith and be authorized by their respective organizations or interest groups to do so. Consequently, each entity included on the committee must designate a senior official to represent its interests.

##### C. Administrative Support and Meetings

The EPA's Regulatory Management Division will supply logistical, administrative, and management support to the committee. To support the negotiations, the EPA will make technical support personnel and expertise available.

##### D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, committee members will determine the most appropriate procedures for committee meetings.

##### E. Defining Consensus

The goal of the negotiating process is to achieve consensus. In the negotiations completed to date, consensus has meant that each participant or interest concurs in the result. The NRA defines consensus as unanimous concurrence among the interests represented on the committee. The advisory committee may agree to define consensus to mean a general but

not unanimous concurrence, or agree upon another definition.

##### F. Failure of Committee to Reach Consensus

In the event the advisory committee is unable to reach consensus, the EPA will proceed with its own rule development approach.

Parties to the negotiation may withdraw at any time. If this happens, the remaining committee members and the Agency will evaluate whether the advisory committee should continue.

##### G. Record of Meetings

In accordance with the FACA and the NRA, the EPA will keep a record of all committee meetings, including minutes of the meetings and any records, reports, working papers or other documents made available to or prepared by the committee for the meetings. This record will be placed in the public docket identified above.

Dated: July 9, 1992.

Bill Jordan,

Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. 92-16792 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[AD-FRL-4154-9]

#### Draft Lead and Particulate Matter Addendum to the General Preamble for Title I of the Clean Air Act Amendments of 1990 and Staff Work Products Providing Technical Guidance for PM-10 Best Available Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice announcing availability of documents and of public meeting.

**SUMMARY:** This document announces the availability of a staff working draft of an addendum to the General Preamble for title I of the Clean Air Act (Act) Amendments of 1990, published on April 16, 1992 [57 FR 13498] and supplemented on April 28, 1992 [57 FR 18070]. The addendum contains EPA's preliminary views of how it should interpret Title I with respect to State implementation plan (SIP) submittal requirements for serious PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment areas. In addition, the addendum will contain EPA's preliminary views of how Title I should be interpreted with respect to certain SIP submittal requirements for lead (Pb)

nonattainment areas and supplements the Pb guidance already presented in the General Preamble. Because of the potential broad interest in the addendum and the complexities of the issues it will address, EPA intends to hold a public meeting on July 30, 1992 to provide the public with an opportunity to comment on its contents before preparation of a final document.

To assist in their review of the draft addendum, this notice also advises the public of the availability in the docket of staff work products issuing technical guidance on best available control measures (BACM) for three PM-10 source categories: urban fugitive dust, residential wood combustion, and prescribed silvicultural and agricultural burning. Because reasonably available control measures (RACM) guidance has been issued [57 FR 13541 (April 16, 1992) and 57 FR 18070 (April 28, 1992)], publication of final versions of these documents will satisfy EPA's requirement to issue RACM and BACM guidance for the three source categories identified under section 190 of the Act.

**DATES:** The public meeting will be held from 9 a.m. to 4:30 p.m. on July 30, 1992. If warranted, the meeting will continue on July 31, 1992 (see discussion below).

**ADDRESSES:** The public meeting will take place at the Zephyr Room, Executive Tower Inn, 1405 Curtis Street, Denver, Colorado. To assist EPA in planning the public meeting, persons interested in reserving time for oral comments should provide Ms. Linda Ferrell with a name and affiliation by July 23, 1992 at the Sulfur Dioxide/Particulate Matter Programs Branch, Office of Air Quality Planning and Standards, MD-15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5585, Fax (919) 541-5489.

**Comments:** The suggested time limit on oral comments at the public meeting is 10 minutes, although EPA reserves the right to limit or extend the time given to each person wishing to speak at the meeting depending on the number of requests. Commenters should bring written copies of their statements to the meeting to submit to EPA. Although a summary of the meeting will be prepared, oral presentations will not be transcribed verbatim. Written comments may also be submitted to the docket for up to 30 days following the public meeting. Written comments are due on, or before, August 30, 1992. Comments should be submitted to the docket in duplicate, if possible (see address below).

**Availability of documents:** The draft addendum to the General Preamble addressing additional SIP requirements for serious PM-10 nonattainment areas and for Pb nonattainment areas is available for copying from the docket (see address below). Single copies are available from the U.S. EPA Library, MD-35, Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. In requesting copies from EPA's North Carolina office, please refer to "State Implementation Plans for Serious PM-10 Nonattainment Areas: Addendum to the General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990," and "State Implementation Plans for Lead Nonattainment Areas: Addendum to the General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990."

The staff work products are available for copying from the docket (see address below). Single copies of the three BACM staff work products are available from the U.S. EPA Library, MD-35, Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Copies of the final documents will be available in the future from the National Technical Information Service. In requesting the documents, please refer to: "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," "Residential Wood Combustion Technical Information Document for Best Available Control Measures," and "Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures." As new information becomes available, EPA intends to update the documents as appropriate. Any such additional information should be forwarded to Mr. Christopher Stoneman at the Sulfur Dioxide/Particulate Matter Programs Branch, Office of Air Quality Planning and Standards, MD-15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**DOCKET:** Docket No. A-92-23, for PM-10, and Docket No. A-92-25, for Pb, are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room M-1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Woodard, telephone (919) 541-5697, for information pertaining to PM-10; Ms. Laurie Ostrand, telephone (919) 541-3277, for information pertaining to Pb; Mr. Christopher

Stoneman, telephone (919) 541-0823, for concerns regarding the staff work products. Each of the persons listed above may also be contacted at the Sulfur Dioxide/Particulate Matter Programs Branch, MD-15, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Addendum to the General Preamble**

Title I of the Clean Air Act Amendments of 1990 reaffirmed certain requirements and adopted certain additional requirements for areas that have not attained the national ambient air quality standards (NAAQS). On April 16, 1992, EPA published a General Preamble which described the Agency's preliminary views on how various provisions should be interpreted for the SIP revisions required for nonattainment areas (57 FR 13498). The General Preamble was supplemented on April 28, 1992 (57 FR 18070). These notices addressed, among other things, SIP requirements for PM-10 nonattainment areas which were classified as moderate, as well as certain requirements for areas which were designated as nonattainment for Pb. In the General Preamble, EPA indicated that guidance on requirements for PM-10 nonattainment areas that were subsequently reclassified as serious would be issued at a later date. In addition, EPA indicated that it would continue to evaluate the need for further guidance on SIP requirements for Pb nonattainment areas. The draft addendum to the General Preamble therefore presents EPA's preliminary interpretations of title I of the Act pertaining to serious PM-10 nonattainment areas and provisions pertaining to Pb nonattainment areas. In both instances, the addendum is intended to provide guidance to States and other interested parties regarding what EPA generally considers acceptable plan submittals in light of its preliminary views. The addendum will also serve as an advance notice to the public describing how EPA generally intends to take action on these SIP submittals in subsequent rulemakings. The following paragraphs provide both a context for this addendum and an overview of its contents.

Sixty-seven areas in the country were designated nonattainment PM-10 and classified as moderate by operation of law upon enactment of the 1990 Amendments ("initial" nonattainment areas), as provided in sections 107(d)(4)(B) and 188(a) (see 56 FR 56694

(November 6, 1991)). The EPA has authority to designate additional areas as moderate under section 188(a). Moderate PM-10 nonattainment areas may be reclassified to serious either before the applicable moderate area attainment date if at any time EPA determines the area cannot "practicably" attain the NAAQS for PM-10 by such date, or following the passage of the applicable moderate area attainment date if EPA determines the area has failed to attain the NAAQS, as discussed in the General Preamble (57 FR 13537). The EPA has proposed to reclassify some of the initial moderate nonattainment areas to serious (see 56 FR 58656 (November 21, 1991)). Section 188(c)(2) of the Act mandates that any initial area reclassified as serious must attain the PM-10 NAAQS by December 31, 2001. In addition to the applicable general requirements for nonattainment area plan submission in the subpart 1 provisions of Title I, and the requirements applicable to moderate areas under subpart 4 of Title I, States containing serious areas must meet the specific serious area SIP submittal requirements identified in section 189(b) of the Act. These include an attainment demonstration (or an alternative demonstration if the State is seeking an extension of the attainment date for the area under section 188(e)) and BACM. The draft addendum addresses certain key provisions applicable to serious areas. It also addresses provisions of the Act authorizing exclusions for certain serious area requirements which would otherwise be applicable, in particular, the section 188(f) waiver provisions and the section 179B international border area provisions.

With regard to Pb nonattainment areas, pursuant to new authority in the Act, EPA has designated 12 areas which were violating the Pb NAAQS as nonattainment (56 FR 56694 (November 6, 1991)) and intends to designate additional areas as warranted. States containing these initial areas must submit SIPs meeting the requirements of part D of Title I by July 6, 1993 (see section 191(a) of the Act). The EPA provided preliminary guidance to States on Part D requirements for Pb in the General Preamble (57 FR 13549). The draft addendum supplements this guidance to States by providing further information on meeting the Part D requirements for RACM, reasonable further progress (RFP), and contingency measures.

This addendum to the General Preamble will not be issued as a rule, but rather reflects EPA's preliminary views on the interpretation of these

requirements. The addendum will not supersede existing State regulations or approved SIP's, will not constitute final EPA action, and thus will not bind States or the public as a matter of law. The public will have further opportunity to comment on the SIP's developed by the States and their reliance on the guidance addressed in the addendum during the States' SIP adoption processes. The public will also have further opportunity to comment at the time that EPA proposes individual SIP's for approval or disapproval pursuant to notice-and-comment rulemaking. Thus, before EPA will give these preliminary interpretations any binding effect (i.e., apply them in Federal rulemakings on SIP submittals), EPA will thoroughly consider any particular factual circumstances presented and submissions made by any person.

In preparing the draft addendum, EPA consulted with experts within the Agency. The EPA would also like to provide the public with an opportunity to comment or raise questions. The EPA is therefore soliciting input on the issues addressed in the addendum at a public meeting in Denver, Colorado, on July 30, 1992. The public meeting will be informal, with an emphasis on encouraging comments and questions rather than on presenting detailed information. The meeting will begin with a brief summary of the draft addendum, followed by comments and questions. The EPA is also providing an opportunity to submit written comments for up to 30 days following the public meeting. In finalizing the addendum, EPA will carefully consider the input generated from this process. The EPA intends to produce a summary report to capture the significant comments and recommendations resulting from the public input process, as well as EPA's responses to such comments. The summary report will be placed in the docket referenced above at the time that EPA publishes a final addendum to the General Preamble.

In the interest of adhering to the public meeting's schedule and ensuring that all topics are covered, EPA suggests that formal comments delivered at the meeting be limited to 10 minutes in duration. The EPA reserves the right to adjust the time allowed depending on the number of commenters wishing to speak. The EPA requests that parties provide EPA with a written copy of their oral comments at the meeting to be included in the summary report. If the time allowed for oral comments proves insufficient, the meeting will be extended to July 31, 1992. However,

persons wishing to make oral presentations should plan to attend the meeting on July 30, 1992, since EPA cannot forecast the need for an additional day at this time.

## II. BACM Staff Work Products

Section 190 of the Act requires EPA to issue technical guidance for RACM and BACM no later than 18 months from enactment of the 1990 Amendments to the Act for three PM-10 source categories: Urban fugitive dust, residential wood combustion, and prescribed silvicultural and agricultural burning. In conjunction with publication of the General Preamble, the EPA discharged the section 190 requirement to issue RACM technical guidance for each of these three source categories (57 FR 13541 and 57 FR 18070). To assist the public in its review of the addendum for PM-10, the BACM staff work products have been placed in the docket. The staff work products are not the subject of the public meeting. When issued in final form, taken together with EPA's previous issuance of RACM technical guidance, EPA's statutory obligation to issue RACM and BACM guidance for fugitive dust, residential wood combustion, and prescribed silvicultural and agricultural burning under section 190 of the Act will be wholly fulfilled.

The documents include information on the control measures EPA regards as among the most effective currently available for control of PM-10 and provide technical guidance to States and other interested parties regarding BACM for the source categories identified. The public will have an opportunity to comment on any actual BACM strategies developed by the States and their reliance on the documents during the States' SIP adoption processes. The public will have further opportunity to comment at the time that EPA proposes individual SIP's for approval or disapproval pursuant to notice-and-comment rulemaking. Thus, as with the addendum to the General Preamble, the technical guidance will not have a binding effect, and EPA will consider the submissions made by any person and the particular factual circumstances presented before the guidance is given any binding effect.

Section 190 also requires that EPA examine other source categories contributing to PM-10 nonattainment, determine whether additional guidance on RACM and BACM is needed, and issue any such guidance no later than November 15, 1993.

The EPA must take into account the PM-10 emissions reductions achieved, or expected to be achieved, under title

IV and other provisions of the Act in issuing guidelines and making determinations under section 190. The EPA does not believe at this time that actual or expected reductions from title IV or other provisions of the Act will significantly reduce emissions from PM-10 source categories addressed in the staff work products. For example, the three source categories addressed in this notice constitute direct sources of PM-10 emissions and, as such, do not overlap with title IV-related reductions which focus on potential precursors, such as SO<sub>2</sub> and NO<sub>x</sub>. Likewise, these three source categories do not appear to be regarded as major sources subject to maximum achievable control technology standards under title III. While emissions from other potential PM-10 source categories may in some fashion be impacted by titles III and IV provisions, any such impacts will be considered in determining whether additional guidance is needed under section 190 at the time that EPA develops and issues any such additional guidance.

The staff work products were developed in consultation with BACM task forces that included representatives from Federal, State, and local agencies involved in the control of the respective PM-10 source categories. As new information comes to light, EPA intends to update the documents as appropriate.

Dated: July 8, 1992.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 92-16898 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 180

[PP 9F3798/P543; FRL-4055-2]

RIN 2070-AB76

## Pesticide Tolerance for Lactofen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** This document proposes to extend an interim tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million (ppm). This tolerance was requested by the Valent U.S.A. Corp. (formerly Chevron Chemical Co.) and establishes

the maximum permissible level for residues of the herbicide in or on this RAC. The interim tolerance expires on December 31, 1993.

**DATES:** Written comments, identified by the document control number, [PP 9F3798/P543], must be received on or before August 17, 1992.

**ADDRESSES:** Written objections, identified by the document control number, [PP 9F3798/R1144], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7830.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 14, 1990 (55 FR 24084), EPA established an interim tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million. This tolerance was requested by Valent U.S.A. Corp. (formerly Chevron Chemical Co.), 1333 N. California Blvd., P.O. Box 805, Walnut Creek, CA 94596-805, and establishes the maximum permissible level for residues of the herbicide in or on this RAC.

The tolerance was issued as an interim tolerance because EPA required animal metabolism studies and additional information on the cottonseed processing study. The tolerance expired on May 31, 1991. A petition for an extension of the tolerance was filed by Valent on March 4, 1992.

EPA's original review of the processing study resulted in a preliminary determination that the concentration did not occur in processed cottonseed products, but additional information on the study was required to confirm that determination. Additional data submitted by Valent have confirmed EPA's original conclusion. The animal metabolism studies were required to determine the nature of the residue in animals and the likelihood of secondary residues in meat, fat, milk, poultry, and eggs. After a review of animal metabolism studies received in November 1990, the Agency

has tentatively concluded that the nature of the residue in animals is adequately understood. For the purposes of this tolerance with an expiration date, the Agency believes that the likelihood of finite residues in animal commodities is minimal based on the results of the short-term metabolism studies. However, for a permanent tolerance a long-term (i.e., minimum 28-day) ruminant feeding study is required to confirm the absence of residues in ruminant byproducts. Other requirements include data on the application procedures utilized in the cottonseed field trials and method validation of the revised analytical methodology for cottonseed. Since these data are still outstanding, EPA believes it is inappropriate to establish a permanent tolerance at this time. Nevertheless, EPA believes that the existing data support an extension of the interim tolerance to December 31, 1993.

There are no pending regulatory actions against the registration of this pesticide. The pesticide is useful for the purpose for which this tolerance is sought. Adequate analytical methodology (gas chromatography) is available for enforcement purposes. The additional residue data submitted to EPA suggest that the analytical methodology may overstate lactofen residues. EPA has required revisions to the method and validation testing; however, until these revisions and validations have been approved, EPA will treat the existing analytical method as an authoritative measure of lactofen residues. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide residue enforcement when requested from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. Office location and telephone number, Crystal Mall #2, rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Based on the information cited above, EPA has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request, within 30 days after

publication of this document in the Federal Register, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9F3798/P543]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1991 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1992.

Douglas D. Camp,   
 Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.432, by revising paragraph (b), to read as follows:

#### § 180.432 Lactofen; tolerances for residues.

(b) An interim tolerance, set to expire on May 31, 1991, is extended and now expires on December 31, 1993, for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodity:

Commodity	Parts per million
Cottonseed .....	0.05

[FR Doc. 92-16627 Filed 7-15-92; 8:45 am]  
BILLING CODE 6580-50-F

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 572

[Docket No. 92-16]

#### Conference Independent Action Provisions

**AGENCY:** Federal Maritime Commission.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission ("Commission") proposes to amend its regulations governing the filing of agreements submitted to the Commission pursuant to section 5 of the Shipping Act of 1984 ("1984 Act" or "Act"). The proposed rule would amend the Commission's regulations to add new requirements concerning conference agreement independent action ("IA") provisions. The proposed rule would: (1) Interpret the term "adopt" as it pertains to the filing of IAs that match an originating carrier's IA; (2) specify the conditions under which conference members could adopt another member's IA time/volume rate ("TVR"); (3) prohibit conferences from establishing notice periods, other than the notice period required by section 5(b)(8) of the 1984 Act for taking initial IAs; (4) prohibit conference provisions that provide authority for allocation of costs on a usage basis for publishing and maintaining member lines' IAs; and (5) prohibit conference provisions that authorize automatic expiration dates for IAs. The purpose of the proposed rule is to preserve an unencumbered right of independent action by conference members as provided for in the 1984 Act.

**DATES:** Comments (original and 15 copies) must be received at the Commission on or before August 17, 1992. The date of mailing will not be accepted as the date of filing in this proceeding.

**ADDRESSES:** Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001.

**FOR FURTHER INFORMATION CONTACT:** Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street,

NW., Washington, DC 20573-0001, (202) 523-5787.

**SUPPLEMENTARY INFORMATION:** Section 5 of the 1984 Act, 46 U.S.C. app. 1704, requires, among other things, that each conference agreement provide for independent action by a conference member on any rate or service item required to be filed in a tariff. Section 5(b)(8) of the Act, *id.* app. 1704(b)(8), specifically states that each conference agreement must provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provisions for that rate or service item.

Congress realized the importance of a strong requirement of independent action to counterbalance the enhanced economic power of conferences. The Conference Report which accompanied the 1984 Act states:

A critical factor enabling the Conferencees to agree on a more narrowly drawn general standard is the inclusion in this bill of numerous other provisions which address the nation's interest in competition in the ocean common carrier industry. \* \* \* [T]he bill includes \* \* \* specific and major procompetitive reforms that will affect the operation of ocean carriers and conferences—notably a strong requirement of independent action with a limited notice period. \* \* \*

H.R. Report No. 600, 98th Cong. 2d Sess. at 33-34 (1984).

In Independent Action—Notice and Meeting Provisions in Conference Agreements, \_\_\_\_ F.M.C. \_\_\_\_, 23 S.R.R. 1022, 1026 (1986), the Commission took the opportunity to emphasize that:

As the Conference Report makes clear, Congress intended independent action to be a procompetitive balance to the more narrowly drawn general standard. \* \* \* Although Congress continued to allow for collective ratemaking by conferences, it provided for a strong, effective right of IA in the clearest of terms.

Section 5(b)(8) permits conferences to require a period of notice, not to exceed 10 days, as a condition for members lines taking independent action. That section does not specify any other condition, requirement, or limitation that may be imposed by a conference upon a member line wishing to take IA.

One of the purposes of the 1984 Act was to achieve a balance between

shippers and carriers. By prohibiting a conference from restraining a member line that wishes to unilaterally establish its own rate, mandatory IA allows conference carriers to respond to rapidly changing trade conditions without leaving the conference and be more flexible in their responses to shippers. Conversely, a conference carrier's option to take IA on rate and service items provides shippers with greater flexibility in their dealings with conferences. In this manner, IA functions as a mediating mechanism between carrier and shipper.

On November 15, 1984, the Commission issued its Final Rule implementing the agreements provisions of the 1984 Act. Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, \_\_\_\_ F.M.C. \_\_\_\_, 22 S.R.R. 1453. This Rule, among other things, removed from the Commission's regulations prescribed mandatory language for conference independent action provisions, and announced a policy that parties to conference agreements were free to develop their own provisions in accordance with the requirements of section 5(b)(8) of the Act. *Id.* at 1498-99. Subsequently, the Commission did limit conference discretion in this area by prescribing some IA safeguards. On April 25, 1986, in Independent Action—Notice and Meeting Provisions, the Commission revised its regulations to require conference agreements to: (1) Establish a maximum notice period of not more than ten days for member lines taking IA; (2) provide for a single notice to the conference of a member line's IA; and (3) state that a member line taking independent action was not required to attend a meeting, or to comply with other procedures, for the purpose of explaining, justifying or compromising a proposed IA.

This proceeding was initiated by an Advance Notice of Proposed Rulemaking ("Advance Notice") published in the *Federal Register*, 57 FR 14551 (April 21, 1992), requesting comment on certain conference policies and procedures concerning IA. The Advance Notice requested comment on five specific areas: (1) Conference agreement provisions that provide authority for member lines to adopt the independent action of another member line, but permit variations from the terms of the original IA; (2) conference agreement provisions that provide for the adoption of, and participation in, IA time/volume rates; (3) conference agreement provisions that impose notice-period conditions on member

lines other than the notice-period conditions specifically stated in section 5(b)(8) of the 1984 Act; (4) conference agreement provisions and conference policy/procedures that provide authority for the conference to assess its members the costs for processing and maintaining individual member lines' IA filings on a usage basis; and (5) conference procedures that impose an automatic expiration date on independent actions.

Twenty-one comments were received in response to the Advance Notice. Comments were submitted by the following conferences: The Asia North America Eastbound Rate Agreement, the "8900" lines and the Mediterranean North Pacific Coast Freight Conference ("ANERA *et al.*"); the South Europe/USA Rate Agreement ("SEUSA"); the North Europe-USA Rate Agreement and the USA-North Europe Rate Agreement ("NEC"); the Venezuelan American Maritime Association, Atlantic and Gulf/West Coast South America Conference, United States/Central America Liner Association, Central America Discussion Agreement, United States Atlantic & Gulf/Hispaniola Steamship Freight Association, Hispaniola Discussion Agreement, United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association, Southeastern Caribbean Discussion Agreement, Jamaica Discussion Agreement, United States/Panama Freight Association, PANAM Discussion Agreement, Puerto Rico/Caribbean Discussion Agreement, and the Caribbean and Central American Discussion Agreement ("Latin American Agreements"); the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("Japan Conferences"); the Inter-American Freight Conference ("IAFC"); and the Transpacific Westbound Rate Agreement ("TWRA").

Shipper comments were submitted by: The National Industrial Transportation League ("NIT League"); the Society of the Plastics Industry, Inc. ("SPI"); Westvaco Corporation ("Westvaco"); the Agriculture Ocean Transportation Coalition ("AgOTC"); the American Paper Institute, Inc. ("API"); E.I. du Pont de Nemours and Company ("Du Pont"); the First International Shippers Association ("FISA"); Dole Citrus ("Dole"); the United Fresh Fruit and Vegetable Association ("UFFVA"); Stone International Pulp Sales ("Stone Intl."); Corning Incorporated ("Corning"); and the Weyerhaeuser Paper Company ("Weyerhaeuser"). The Department of Justice ("DOJ") and the Department of Transportation ("DOT") also submitted comments. A number of

commenters take essentially similar positions. Accordingly, we will make generalized representations without individual attribution, unless otherwise appropriate.

#### The Meaning of "Adopt"

Several conferences have filed amendments to their agreements which have raised the issue of whether an adopting IA can be different from the original IA. Both section 5(b)(8) of the 1984 Act and the Commission's rules governing IA use the term "adopt" when referring to one member taking on another member's initial IA. However, the term "adopt" never has been defined in the Commission's rules or in a Commission proceeding. Although the legislative history of the 1984 Act discusses the general concept of independent action, it is silent regarding the specifics of an adopting IA, including the meaning of the term "adopt." In *Modifications to the Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement*, — F.M.C. — 23 S.R.R. 1391 (1986), the Commission stated: "The term 'adopt' signifies an action whereby a following member line takes the action of the initiating member line and makes it its own without any connotation of its having been another's." *Id.* at 1400 (footnote omitted). Nothing in that proceeding, however, specifically indicates how "adopt" should be defined.

The Advance Notice requested comments on whether an adopting IA can be different from an original IA. Eleven comments specifically address this issue. Most of these commenters agree with SEUSA that the term "adopt," \* \* \* is best defined to allow a member line to adopt the initial IA in whole or in part without change in the terms of the initial IA by the adopting member." SEUSA at 1. The commenters argue that member lines should not be required to adopt the IA in its entirety, but should be allowed the flexibility to adopt a portion of an initial IA that is applicable to its service. As one commenter states: "The word 'adopt' should be interpreted to permit of [sic] some modicum of flexibility. Where, for example, an adoption action does not alter the rates or charges or terms and conditions, or add anything new that was not originally published, but does not embrace the entirety of the original IA action, such a partial matching should be regarded as a legally permissible adoption." Japan Conferences at 2. Commenters are

careful to point out, however, that any portion adopted should be identical to that part of the original IA.

ANERA *et al.* and two shippers believe that the Commission should afford conference members the greatest flexibility possible in serving their customers' needs. These commenters would define the term "adopt" to permit a member line to adopt the initial IA but to adjust it as it applies to the adopting carrier. They view such an interpretation as "a liberalizing device" which would give individual carrier members additional flexibility.

DOJ asserts that any Commission interpretation of section 5(b)(8) of the 1984 Act should "not substantially reduce the incentives of conference members to exercise the right of independent action." DOJ at 2. DOJ also believes that the Commission must \* \* \* prevent impediments to the free exercise of the right of independent action." DOJ at 5. DOJ is in favor of the Commission seeking further comment on several specific questions on this issue.

The Commission believes that the term "adopt" should be confined to mean "identical" to whatever portion of an originating IA is being adopted. Both the terminology used in the statute and the possible adverse impact of altering initial IAs under the adoption process support this interpretation.

As stated previously, section 5(b)(8) of the Act provides that a conference must allow its member lines, if they so choose, to take independent action and to adopt the IAs of other members. Development of an appropriate definition for the term "adopt" with respect to IA requires an analysis of the use of the word "the" and its overall effect on section 5(b)(8) of the Act. "The" is defined as:

—a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstances.<sup>1</sup>

"The" is used in section 5(b)(8) in two separate places that deal with initial and adopting IA. Once a member line elects to initiate its own IA rate or service item, the conference must \* \* \* include the new rate or service item in its tariff for use by that member, \* \* \* and by any other member" who "elects to adopt the independent rate or service item \* \* \*" (emphasis added).

The statutory text that follows "the" clearly refers back to the original independent action rate or service item. That is, when a member line "elects to adopt the independent rate or service

<sup>1</sup> Webster's Ninth New Collegiate Dictionary 1222 (Merriam-Webster Inc., 1986).

item," it adopts that of the originating member. It follows that any change or alteration from the original IA results in a new independent action, and should not be considered an adoption of the original member's IA.

Nothing in the language of the statute supports the proposition that an adoption of an IA is anything more than the adoption of the identical IA of the originating member line. If Congress had intended otherwise, it would have avoided use of the word "the."

Therefore, with respect to the adoption of IAs, it appears that the phrase "independent rate or service item" following the word "the" is definite, and requires adoption of the initial IA as it is specified.

In addition to an evaluation of the statutory text, it is important to point out three possible adverse effects of altering initial IAs under the adoption process. First, a member line could be inhibited from taking IA if another member line, in an adoption action, can alter the original member's IA. For example, assume a conference rate per twenty-foot container for toys from Hong Kong to Long Beach is \$2,000 and Carrier A initiates an IA rate of \$1,500 per twenty-foot container in response to a shipper's request. The shipper then solicits Carrier B for the same IA rate, but Carrier B cannot match the rate of Carrier A because it has higher operating costs due to a superior service. Carrier B then "adopts" Carrier A's rate at a level of \$1,650 per twenty-foot container, slightly higher than Carrier A's rate but less than the conference rate. Since Carrier B's superior service justifies a \$150 difference in the rate, the shipper chooses to ship its cargo with Carrier B instead of Carrier A.

Thus, the initiating carrier's future incentive to take IA may be diminished by the threat of other carriers working off its IA rate. Unlike an initial IA, the adoption of an IA is not restricted by a maximum ten-day waiting period. A carrier, working off an initiating carrier's IA but substantially altering the original IA, could achieve an advantage over the initiating carrier, as well as other conference carriers, that it would not have if it were required to file its IA as an initial IA and wait the maximum ten-day period before executing the rate.

Second, there would be nothing to keep an adopting IA carrier from lowering the original IA rate reduction, but without being restricted by the maximum ten-day notice period required of initial IAs. In such circumstances, an adopting IA could be used to undercut a weaker competitor that took the original IA. This could be particularly important in a situation where a block of attractive

cargo is ready to be moved. Again, a carrier's incentive to initiate IA may be diminished.

Third, allowing an adopting member to alter an initial IA could cause ambiguity in the agreement process. If a member line does not adopt the original IA in its entirety, it becomes difficult to determine when an independent action is, in fact, a new or an adopting IA.

The Commission therefore proposes a rule that could explicitly affirm that any adoption of an independent-action rate or service item or a particular portion of such rate or service item must be identical to the initial independent action. The Commission views any change made to the original independent action by another member line as a new IA subject to the filing provisions of the applicable agreement. The proposed rule also specifies that, in order to comply with section 5(b)(8) of the 1984 Act, conference agreement provisions must use the term "adopt" when referring to the adoption of one member's independent action by another member line. The proposed rule interprets the word "adopt" to refer to the filing of independent action by carriers who wish to offer a rate or service which matches exactly the independent rate or service of the originating carrier, with the exception that in the case of an IA TVR, the actual dates offered by an adopting carrier may vary from the dates offered by the originating carrier, so long as the duration of the adopting IA is the same as the originating IA.

#### Adoption of and Participation in Time/Volume Rates

The Commission has received agreement filings which permit members to participate in the IA TVRs of other members by filing a "following independent action" notice with the conference office. These filings raise concerns regarding the adoptability of TVRs and whether participation in an originating carrier's IA TVR is permissible under the Act.

A TVR is a type of rate whereby a carrier or conference offers a shipper a special rate that varies with the volume of cargo shipped over a specified period of time. Should the shipper fail to ship the minimum level of cargo specified in the TVR within the time prescribed, the cargo carried from the beginning of the TVR time period is re-rated by the carrier at the otherwise applicable tariff rate. When a conference carrier breaks from a conference rate (whether it be a TVR or conventional rate) and sets its own rate, it exercises its right of independent action. If the carrier chooses to establish a TVR, such

independent action is known as an IA TVR.

An adoption of an IA TVR occurs when a conference carrier adopts the TVR of another conference member who has filed an IA TVR. The adopt of an IA TVR can be implemented in at least two ways. First, an adopting carrier can participate in the original IA TVR ("participating IA TVR"). In this instance, the shipper receives the volume discount rate from the initiating and adopting IA carriers once its combined shipments among the IA and adopting IA carriers meet the IA TVR's volume commitment. For example, if the IA TVR required 500 containers to secure a rate of \$2000 per container, and another carrier adopted that IA TVR, then the shipper would get the IA TVR discount once it shipped 500 containers, regardless of how the 500 containers was divided between the two carriers. In this scenario, the adopting IA-TV carrier literally joined in the TVR of the originating IA-TV carrier.

Another way IA TVR might be adopted would be for the adopting IA TVR carrier to give the shipper an identical, but separate arrangement from the originating IA TVR carrier, and to not join in the original IA TVR ("non-participating IA TVR"). Again, using the above example, if the originating IA-TV carrier required 500 containers to meet the \$2000 rate per container, the adopting IA-TV carrier would also require 500 containers. The shipper would only get the \$2000 per container rate from the carrier with whom it shipped 500 containers (or from both carriers if it shipped at least 500 containers with each). The shipper would not be permitted to combine shipments with both carriers to meet the 500-container requirement. In this situation, there is no joint IA TVR; the adopting IA-TV carrier is simply offering a TVR identical to the originating carrier's IA TVR.

The 1984 Act and its legislative history are silent regarding the adopting of IA TVRs. To date, the Commission has not addressed the issue.

Section 5(b)(8) states in part that an IA shall be for use by that initiating carrier, and by any other member that notifies the conference that it elects to adopt the independent rate. The Advance Notice sought comment on whether section 5(b)(8) of the Act permits a carrier to participate in an IA TVR. Commenters were asked to address the issue's impact on conferences, independent carriers and shippers, as well as its legality under the 1984 Act.

The commenters fall into three groups: those in favor of adopting IA TVRs without restriction,<sup>2</sup> those who support prohibiting the adopts of IA TVRs,<sup>3</sup> and those who would restrict (but not abolish) the adoption of IA TVRs.<sup>4</sup>

Those in favor of adopting IA TVRs without restriction argue that the authority to adopt an IA TVR is essentially a guaranteed right under the Act.

Allowing member lines to adopt and participate in the same IA time/volume rate ('TVR') as the initiating member line not only carries out the plain meaning of the Act, but is the only interpretation of the Act that gives maximum service options and competitive flexibility to all concerned. Any other view would restrict the flexibility of shippers and carriers and eviscerate the right of other members to exercise their statutory right to adopt IA TVRs.

ANERA *et al.* at 2.

Those arguing for prohibiting the adoption of IA TVRs believe that permitting adopting IA TVRs creates disincentives to take IA.

A Conference Agreement which allows an 'adopting carrier' to join in the original IA TVR with the shippers splitting shipments between the IA TVR carrier and the adopting IA TVR carrier(s), robs the originating IA TVR carrier of the benefits of its initiative. It thus serves as a major disincentive to IA TVRs, and therefore constitutes a restriction on independent action not envisioned or allowed by the Shipping Act.

As to the question of whether an IA TVR may be adopted by another Conference carrier in a manner which would give the shipper an identical, but separate arrangement from the originating IA TVR carrier, the impact would seem to be the same—to threaten the cargo commitment expected by the originating carrier, and thus to have a chilling effect on any carrier considering an IA TVR.

API at 9.

The third group is generally opposed to the adoption of participating IA TVRs, but would allow the adoption of non-participating IA TVRs.

The Conferences recognize independent action [sic], including the right to 'adopt' the independent actions of others, applies equally to time/volume rates. Conference Report, p. 29. However, in the case of an IA TVR, this does not include the right to join in the IA filing made by the originating carrier and convert that independent filing into a joint holding out. It is simply the right to offer

the same rate under the same terms and conditions as the originating carrier.

Japan Conferences at 5-6 (emphasis in original).

The Commission believes that IA TVRs must be viewed as any other adopting IA rate action. Two issues arise in this context, however. The first is whether a carrier can adopt an identical IA TVR after it has become effective without altering the time period. Altering the time period no longer makes it identical. Under this circumstance, the statutory language requiring conferences to permit the adoption of an original IA after its effective date would appear to take precedence over an insistence that "adopt" always means "identical" as to the specific time period covered by the original IA where IA TVRs are concerned. In other words, the term "adopt" does not seem to require "identical" time periods in those instances where a carrier wishes to adopt an IA TVR after it has become effective.

The second issue IA TVRs raise is whether a conference carrier should be permitted to join in an IA TVR already filed by another member line. We believe not.

First, the adopting IA language in the statute would appear to cover a rate offering that is materially identical to the original IA offering—a rate offering that has material differences is simply treated as a new IA rate. When an adopting IA-TV carrier participates with the original IA-TV carrier, this changes the original IA TVR and would seem to be a new rate offering, not an adopting IA. A material change would exist because the originating carrier may be forced to give a shipper the discounted TVR even though the shipper may not tender that carrier the same volume of cargo specified in the originating IA TVR. Thus, the originating IA-TV carrier would be forced into offering a participating TVR without its consent. The statute does not appear to sanction such a result.

Second, participation could reduce the amount of cargo and revenue the shipper provides to the carrier originating the IA TVR, and essentially require the carrier to give a volume discount without the volume. It would appear that the only protection a carrier would have from the possibility of being forced into such a situation would be to never file an original IA TVR. Therefore, permitting additional carriers to participate in the IA TVR of an originating carrier could inhibit the taking of an IA TVR in the first instance.

The Commission, therefore, proposes a rule that specifies the conditions under

which conference members can adopt another member's IA TVR. The proposed rule provides that a member line can adopt an initiating member's IA TVR before its effective date, in its entirety, without change to any aspect of the original rate offering. Adoption of an initiating member's IA TVR after its effective date would be permitted, provided the adopting carrier appropriately adjusted the beginning and ending date of its adopting IA TVR to make the duration the same as the originating IA TVR. The proposed rule would prohibit member lines from participating in an IA TVR filed by another member line. Member lines may, however, offer joint TVRs if permitted to do so under the terms of their agreement. The proposed rule also allows any TVR participated in by another conference member and in effect prior to the effective date of any final rule in this proceeding to remain in effect until 90 days from the effective date of such fine rule.

#### Notice Period

The Advance Notice requested comment on whether conference agreement provisions that impose notice-period conditions on member lines, other than those specifically stated in section 5(b)(8) of the Act, should be permitted. For example, one conference requires a member to give the conference office forty-eight hours' notice of the withdrawal of an IA in order to meet a lower conference rate applicable to the same commodity or service item.

The Commission received eleven comments on this notice period issue. All commenting conferences oppose a Commission rule that would prohibit conferences from imposing on their member lines notice-period conditions not expressly allowed by section 5(b)(8) of the Act. They argue that they may establish other notice period requirements because section 5(b)(8) does not explicitly prohibit them. Some conferences contend that Congress did not intend to restrict conferences from imposing other notice period requirements on member lines. NEC states that, while it is not opposed to a rulemaking regarding particular types of IA notice provisions that may raise specific legal issues, it does not consider a rule prohibiting all conference IA notice provisions, other than those expressly stated in the Act, to be appropriate or necessary.

Some conferences believe that they can establish supplementary IA notice provisions as authorized by their respective agreements to apply to the

<sup>2</sup> ANERA *et al.*, DOT, IAFC, Latin American Agreements, NEC, SEUSA and TWRA.

<sup>3</sup> AgOTC, API, Dole, UFFVA and Westvaco.

<sup>4</sup> DOJ, Japan Conferences and Weyerhaeuser. This group also includes Du Pont, which would permit adopting IA TVRs with the shipper's permission, and SPI, which would require the originating IA TVR carrier's permission in addition to the shipper's permission.

withdrawal, amendment, postponement or cancellation of a previous IA. These conferences contend that reasonable notice periods for the withdrawal, amendment, postponement or cancellation of an IA are permissible under section 5(b)(8) and the Commission's regulations. It is argued that the propriety and merit of such ancillary provisions should be determined by the Commission on a case-by-case basis.

Other conferences consider the withdrawal, amendment, postponement or cancellation of an IA to be an initial or new IA, and believe that such actions are subject to the "effective on not more than ten days' notice" requirements of section 5(b)(8). The Japan Conferences state: "Other than matching [adopting] actions, \* \* \* every independent action taken is an *initial* independent action irrespective of whether it amends an existing IA, cancels an existing IA or initiates an entirely new IA." Japan Conferences at 6-7 (emphasis in original). A number of conferences contend that although no-notice periods for withdrawn, amended, postponed or canceled IAs might provide more flexibility for conference member lines, no-notice periods would make it administratively difficult, if not impossible, for the conference secretariat to administer the conference tariff.

In general, all commenting shippers are concerned that the right of conference carriers to exercise IA be preserved. Of the twelve shippers commenting, five address notice periods. They believe that conference provisions imposing a notice period on the withdrawal of an IA could be used to discourage the use of IA, which undermines the objectives of section 5(b)(8). "To permit further notice period requirements would allow conferences to place unnecessary obstacles before members who wish to undertake independent action." NIT League at 3. API noted that a notice period for the withdrawal of an IA serves only to discourage a member line from taking IA at the outset. A notice period requirement for the withdrawal of an IA is said to constitute \* \* \* a threat to the member carrier who is thinking of taking IA. If the member carrier were to take IA \* \* \* and subsequently the Conference were to reduce its tariff rate to a level below that of the IA, any notice period imposed upon the member which took the IA and now wishes to rejoin the Conference undermines the competitiveness of that member for the duration of the notice period." API at 5.

Some commenting shippers also argue that the 1984 Act's legislative history supports the prohibition of conference agreement provisions that impose requirements other than the maximum ten-day notice period. Others maintain that conferences should not have the authority to impose conditions on IA other than the ten-day notice period permitted by the statute, regardless of the characterization of the nature of the action.

DOJ and DOT believe that conference agreement provisions that impose advance notice requirements on IAs, other than that specifically stated in section 5(b)(8) of the Act, should be prohibited. Both note the Commission's past decisions that conferences may not impose additional restrictions on the exercise of the right of IA. DOT contends that additional restrictions would impede individual carrier flexibility, which Congress insisted upon in return for extending collective ratemaking authority. It also states that a notice period for actions such as the withdrawal of an IA "raises the possibility that the issuing conference is in fact simply trying to make the exercise of IA rights by its member lines more difficult." DOT at 4. DOJ argues that notice-period restrictions other than the ten-day waiting period authorized by the Act serve to penalize those who exercise their IA rights. It concludes that "The existence of such a threat poses a substantial disincentive to the exercise of the right of IA, and the imposition of such a burden on IA should be considered unlawful." DOJ at 11-12.

The act of adopting, withdrawing, amending, postponing or canceling an IA, although performed by an individual member line, does not appear to create a *new* independent rate action or service item separate from that of the conference. Therefore, the Act's maximum ten-day notice period associated with initial independent actions does not apply. Nor does section 5(b)(8) otherwise provide a period within which a conference member must notify the conference of its intent to adopt withdraw, amend, postpone or cancel an initial IA.

In *Independent Action—Notice and Meeting Provisions*, the Commission advised that:

To argue that the Act's alleged silence permits other substantive requirements or conditions which would effectively add to the limited notice requirement, either as a precondition to or as a consequence of independent action, is contrary to the express language of the Act. Any condition, procedure or other mandatory requirement that in effect *adds* to the 10-day maximum notice requirement or places a mandatory

burden on IA is, on its face, *per se* violative of section 5(b)(8).

23 S.R.R. at 1027 (emphasis added).

The Commission had earlier stated:

The 1984 Act represents a legislative effort to balance the interests of carriers and shippers. In order to fulfill the Congressional purpose, it is necessary to ensure that the right of independent action is fully preserved and that no restrictions, other than those permitted by the statute, are placed on its exercise.

Preserving an unburdened right of independent action is in keeping with the Congressional purpose. Restricting, burdening, or making it more difficult to exercise independent action defeats the purpose of the Act and the legislative compromise that led to the Act's passage.

*Id.* at 1026.

Notice or waiting period requirements for actions taken that affect previously taken IAs or adopting IAs could hamper a conference member's right to independent action. Not only do notice periods delay adopting-IA filings, but they could also prevent a member line from filing an adopting IA in those instances where the initial IA is withdrawn prior to its intended effective date. Additionally, requiring member lines to adhere to a withdrawal notice period could serve to restrict IA by inhibiting a carrier from quickly reacting to the conference establishing a rate below that carrier's IA. Accordingly, the Commission in this proceeding proposes to prohibit conference agreement provisions that impose notice periods for adopting, withdrawing, amending, postponing or canceling IAs.

#### Filing and Maintenance Fees

Some conferences are assessing their individual member lines the costs incurred in processing IA's. These include initial IAs, matching or adopting IAs (if separately filed), and the maintenance of IAs. The Commission is concerned that the assessment of filing and maintenance fees on a usage basis may restrict a member's right to take independent action.

The Advance Notice requested comments on member lines being assessed conference costs incurred in processing tariff filings that were requested or initiated by individual lines for their own use, and how the costs should be assessed. The Commission was particularly interested in whether such filing and maintenance fees regarding IAs were legal under the 1984 Act, and their impact on conferences, independent carriers and shippers.

Comments on this issue fell into two categories: those who believe that

maintenance and filing fees should be permitted and those who believe such fees discourage a carrier from taking IA. Some commenters in the latter group could support fees, but on a *per capita* rather than a usage basis.

Conference commenters generally believe that conference agreements may legally provide for the assessment of the costs incurred in the processing and filing of IAs. Many conferences note that both section 5(b)(8) and the legislative history of the 1984 Act are silent with regard to the assessment of costs in the context of IAs. The IAFC argues that it would be beyond the Commission's authority to prohibit a conference from seeking reimbursement for the costs associated with processing and filing IAs for its members. Some conferences make the point that other members should not subsidize the costs associated with an IA filed by another member for its exclusive use.

Conference commenters also reject the notion that assessing a member line for the costs of filing its IAs would deter if from taking IA and would interfere with its statutory right of independent action.<sup>6</sup> First, they do not believe the cost of filing or processing an IA outweighs the potential revenue a carrier would earn by carrying cargo it would not have transported if it had not taken IA. Second, they argue that while a member line incurs additional costs with respect to each of its IAs, it avoids the costs associated with the IAs of the other conference members.

Many conferences maintain that the assessment of IA costs is an internal conference administrative affair that the Commission should not get involved in. Several conferences argue that it is not *per se* illegal for conferences to agree on how costs of conference operations should be allocated and that the Commission, if it has reason to believe that a particular activity has the effect of penalizing a carrier and hence thwarting its statutory right of mandatory IA, may take appropriate measures. TWRA and the Japan Conferences note that the Commission has addressed the question of IA fees to recover costs, and has taken no action based on its review of information submitted by certain conferences. The situation is said not to have changed and therefore, rulemaking on this issue is deemed unnecessary.

Shipper commenters take the position that filing and maintenance fees could discourage a carrier from considering IA and that the Commission should prohibit any provisions or actions which may restrict IA. Many shippers are wary that a direct fee or charge, even if the costs are associated with processing IAs and regardless how "moderate" or reasonable, can be construed as a barrier to IA given the thousands of commodities considered for IA. Several shippers state that there is no express language in the 1984 Act or its legislative history allowing a conference to charge its members for costs associated with their IAs and, therefore, conferences should not be permitted to assess IA filing fees.

Other shipper commenters support the concept of assessing members a fee based upon reasonable processing and filing costs. One shipper would permit each conference member to be assessed the same rate regardless of the number of IAs it specifically requested.

DOJ and DOT argue that the Commission should ensure that conferences not penalize member lines for exercising their right of IA. DOT states: "The Commission's primary regulatory concern should be that proposed charges are reasonably related to the ministerial function performed, and not in fact a penalty imposed on member lines \* \* \*." DOT at 4. DOJ submits that the imposition of conference charges for IA filings could be at least as burdensome as other requirements such as multiple notices and mandatory attendance at conference meetings, which the Commission has rejected as impermissible restrictions on the right of IA. DOJ states that a conference has an incentive to minimize IA; thus, there is a danger that excessive charges could be imposed as a means of deterring IA. "While nominal charges limited to recovering costs might be unobjectionable in theory, in practice, it could be very difficult to determine the reasonableness of charges to particular carriers." DOJ at 13. Thus, DOJ would not permit conferences to assess IA filing fees. Should conferences experience financial hardship as a result of their inability to impose such fees, it believes that the Commission could revisit this issue.

The statutory obligation of a conference to provide for IA should not be shifted to member lines exercising that right. Assessing members the cost of filing and maintaining IAs on a usage basis appears to do that. If a member line does not pay the conference publishing and maintenance fees

associated with IAs, the line's proposed IA presumably would not be published by the conference, thus restricting the member's ability to engage an IA rate for its own use. Expenses incurred by the conference for filing or maintaining IAs should be considered administrative costs and shared, as other administrative costs, on a *per capita* basis rather than on a usage basis. By charging fees for processing IAs on a *per capita* basis, it would be clear that members were not being discouraged from taking IA or penalized for doing so.

Thus, the proposed rule prohibits conferences from assessing their member lines either filing fees or maintenance fees on a usage basis for expenses incurred by the conference in processing and administering independent action filings.

#### Automatic Expiration Dates

The Advance Notice advised that at least one conference had adopted the practice of assigning automatic expiration dates for IAs when none was specified. As the Commission understands the practice, if an initiating member line neglects to indicate a specific expiration date or does not indicate that it wishes no expiration date, a conference-imposed expiration date, for example ninety days, is automatically assigned to the IA. The Commission requested comments on whether conferences should be permitted to so assign automatic expiration dates for IAs.

The comments received on this issue were divided along industry lines. Conferences generally advocated that it was permissible for them to impose automatic expiration dates—with the understanding that member lines can "opt out" or amend the conference-imposed expiration date. Shippers, with DOJ and DOT concurring, took the position that the Commission should not allow conferences to impose automatic expiration dates on IAs.

The conference comments contain two basic arguments. First, they contend that the 1984 Act does not specifically prohibit conferences from assigning expiration dates to IAs. Second, they refer to the imposition of expiration dates as a "housecleaning" method to rid conference tariffs of outdated and unused IAs. They believe that automatic expiration dates are lawful under the 1984 Act, and point out that member lines would be free to change or amend the conference-imposed date.

Shipper comments generally challenge conference-imposed expiration dates as not permitted by the 1984 Act and as placing an extra burden upon member

<sup>6</sup> TWRA indicates that it charges substantively less for IA filing fees than the incremental costs that are attributable only to tariff page preparation and filing of IAs. It knows of no instance in which a member which wanted to take IA did not do so or hesitated to do so because of IA filing fees.

lines taking IA. They urge the Commission not to allow conferences to impose automatic expiration dates on IAs.

DOT and DOJ agree with the shippers: "DOT does not believe that such provisions [automatic expiration dates] should be permitted. Carriers that take independent actions are solely responsible for the terms of their independent arrangements with shippers." DOT at 5. "Conference imposition of arbitrary termination dates on IAs \* \* \* constitutes an unwarranted constraint on the right of independent action." DOJ at 13.

The Commission believes that the member line exercising IA, and not the conference, should be the party that initiates and decides the expiration date of an IA. The unilateral assignment of automatic expiration dates for IAs by conferences appears to restrict the exercise of IA, thereby undermining the purpose of section 5(b)(8) and the legislative compromise underlying the 1984 Act. As stated in Independent Action—Notice and Meeting Provisions, the only restrictions that may be placed on IA are those found in the statute. Notwithstanding the conferences' position that automatic expiration dates are permissible so long as the member line can "opt out," even such opting out of a conference-imposed date can be viewed as an added burden on a member's IA rights. There should be other methods conferences can employ to dispose of outdated rates in their tariffs that do not hinder a member's right to take independent action.

The Commission therefore, proposes to incorporate in its agreement rules a provision expressly prohibiting a conference from designating an expiration date for an IA in the absence of such a date designated by the carrier taking the IA.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of this Order and has determined that the rule, if adopted, is not a "major rule" as defined because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, the Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), as amended. Public reporting burden for this collection of information is estimated to vary from 18 to 22 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Current independent action regulations contained in 46 CFR 572.502(a)(4) would be moved to a new subpart (Subpart H—Conference Agreements) and redesignated 46 CFR 572.801—Independent action. The new regulations recommended by this proposed rule would be added to the new subpart H. In addition, the Commission's current rules governing conference service contract provisions (46 CFR 572.502(a)(5)) would be moved to subpart H and redesignated 46 CFR 572.802—Service contracts.

#### List of Subjects in 46 CFR Part 572

Administrative practice and procedure, Antitrust, Maritime carriers, Rate and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6, and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1705, 1716, part 572 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

#### PART 572—[AMENDED]

1. The authority citation for part 572 continues to read:

Authority: 5 U.S.C. 533; 46 U.S.C. app. 1701-1707, 1709-1710, 1712, and 1714-1717.

2. Paragraphs (a)(4) and (a)(5) of § 572.502 are revised to read as follows:

#### § 572.502 Organization of conference and interconference agreements.

(a) \* \* \*

##### (4) Article 13—Independent action.

The regulations for independent action are contained in § 572.801 of this part.

##### (5) Article 14—Service contracts.

The regulations for service contracts are contained in § 572.802 of this part.

3. A new subpart H is added to part 572 reading as follows:

#### Subpart H—Conference Agreements

Sec.

572.801 Independent action.

572.801 Service contracts.

#### Subpart H—Conference Agreements

##### § 572.801 Independent action.

(a) Each conference agreement shall specify the independent action procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b) (1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 580.10(a)(2).

(2) A conference agreement shall not require notice from member lines for adopting, withdrawing, amending, postponing or canceling independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or

compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action shall be included by the conference in its tariff for use by that member effective no later 10 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f) (1) As it pertains to this part, adopt means the assumption in identical form of an originating member's independent action rate or service item, or a particular portion of such rate or item. In the case of an independent action time/volume rate ("IA TVR"), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than adopt (e.g., follow, match) can be used to describe the action of assuming as one's own an initiating carrier's IA. Additionally, if a party to an agreement assumes an IA of another party, but alters it, such action is considered a new IA and must be filed pursuant to the IA filing and notice provisions of the applicable agreement.

(2) An independent action time/volume rate ("IA TVR") filed by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (i.e., a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering which results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. No carrier may participate with another carrier in an IA TVR already filed by another carrier. Member lines may, however, jointly file TVRs if permitted to do so under the terms of their agreement. Any currently effective TVR in which two or more member lines participate shall be permitted to remain in effect until [Insert Date 90 Days From the Effective Date of Final Rule].

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the

agreement in processing independent action filings.

(h) A conference agreement shall not permit the conference to designate a termination date for an independent action taken by a member line in the absence of an expiration date specified by the member line itself. Only a member line may determine the duration of its IA and establish an expiration date for such IA. If no specific expiration date is established, the duration of the IA shall be deemed to be indefinite.

(i) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than [Insert Date 90 Days From the Effective Date of Final Rule].

(j) Any new conference agreement or any modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601 of this part.

(k) If ratemaking is by sections within a conference, then any notice to the conference required by § 572.801 may be made to the particular ratemaking section.

#### § 572.802 Service contracts.

(a) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(b) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(c) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

By the Commission.

Joseph C. Polking,  
Secretary.

[FR Doc. 92-16648 Filed 7-15-92; 8:45 am]

BILLING CODE 6730-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1037

[Ex Parte No. 502]

### Bulk Grain and Grain Products—Loss and Damage Claims

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to eliminate its regulations at 49 CFR 1037.2 (a) and (c). Public comment is sought. Because bulk grain and grain products now move primarily in covered hopper cars, these boxcar rules no longer appear necessary.

**DATES:** Comments are due by August 17, 1992.

**ADDRESSES:** Send an original and 10 copies of all comments referring to Ex Parte No. 502 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927-5660 [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:** On July 31, 1991, the Commission issued an advance notice of proposed rulemaking published in the *Federal Register* on August 1, 1991 at (56 FR 36752) seeking comment on whether the rules at 49 CFR part 1037<sup>1</sup> continue to serve any useful purpose and whether they should be eliminated, retained, or modified.

Eleven comments were received. Ten opposed elimination,<sup>2</sup> and one, filed by

<sup>1</sup> Rules for the Handling of Bulk Grain and Grain products in Interstate Commerce, and the Filing, Investigation, and Disposition of Claims for Loss and Damage Incident Thereto, Which Supersede the Rules Prescribed in Ex Parte No. 283, Loss and Damage Claims, 340 L.C.C. 515 (37 FR 20943).

<sup>2</sup> A joint comment was filed by Bunge Corporation, Continental Grain Company, and Louis Dreyfus Corporation. Individual comments were filed by the Kansas Grain and Feed Association, the Board of Trade of Kansas City, MO, Inc., the Grain Transportation Consultants of the Northwest, the Grain Dealers Association, the Board of Trade of the City of Chicago, the Secretary of the United States Department of Agriculture, Union Equity Cooperative Exchange, and Skill Transportation Consulting, Inc.

the Association of American Railroads, supported elimination.

Based on the comments received, we conclude that, with two exceptions, the rules continue to serve a useful purpose and should be retained. The two exceptions apply to the rules applicable to boxcar movements. Because bulk grain and grain products now move primarily in covered hopper cars, we propose to eliminate §§ 1037.2 (a) and (c) since they apply only to boxcar shipments. Further comment on this proposal is invited from interested persons.

The proposed action is intended to eliminate unnecessary regulation. We tentatively conclude that it will have no substantial adverse impact upon a significant number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### List of Subjects in 49 CFR Part 1037

Claims, Grains, Railroads.

Decided: July 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 10347 of the code of Federal Regulations is proposed to be amended as follows:

#### **PART 1037—RULES FOR THE HANDLING OF BULK GRAIN AND GRAIN PRODUCTS IN INTERSTATE COMMERCE, AND THE FILING, INVESTIGATION, AND DISPOSITION OF CLAIMS FOR LOSS AND DAMAGE INCIDENT THERETO, WHICH SUPERSEDE THE RULES PRESCRIBED IN EX PARTE No. 263, LOSS AND DAMAGE CLAIMS, 340 I.C.C. 515 (37 FR 20943)**

1. The authority citation for part 1037 continues to read as follows:

Authority: 49 U.S.C. 12 and 15.

#### **§ 1037.2 [Amended]**

2. Section 1037.2 is proposed to be amended by removing paragraphs (a) and (c) and by removing the paragraph designation from paragraph (b).

[FR Doc. 92-16762 Filed 7-15-92; 8:45 am]

BILLING CODE 7035-01-M

#### **49 CFR Part 1039**

[Ex Parte No. 346 (Sub-No. 28)]

#### **Rail General Exemption Authority: Export Corn and Export Soybeans**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is seeking public comment on whether to exempt from its regulation the rail transportation of export corn and export soybeans. The Commission has concluded, preliminarily, that regulation of the rail transportation of export corn and export soybeans is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from an abuse of market power. The exemption will allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.

**DATES:** Comments must be submitted by August 17, 1992.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 28) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660 [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

#### **Environmental and Energy Considerations**

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the proposed action is to reduce regulation. No new reporting or other requirements are

imposed, directly or indirectly, on small entities. The impact, if any, will be to reduce the amount of paperwork, tariff filing, and related activities.

We invite comment on the issue of the economic impact of our proposal on small entities.

#### **List of Subjects in 49 CFR Part 1039**

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: July 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 1039—EXEMPTIONS**

1. The authority citation for part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553.

2. Section 1039.10 is proposed to be amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.**

(b) Exemption for export corn and export soybeans. See § 1039.24.

3. A new § 1039.24 is proposed to be added to read as follows:

#### **§ 1039.24 Export corn and export soybeans.**

(a) The rail transportation of corn (STCC No. 01132) that originates at a point in the United States and moves from the United States to a destination outside the United States is exempt from the provisions of 49 U.S.C. subtitle IV, except that carriers must continue to comply with the Commission's accounting and reporting requirements. The STCC reference is to Standard Transportation Commodity Code Tariff 6001-T, effective January 1, 1992.

(b) The rail transportation of soybeans (STCC No. 01144) that originate at a point in the United States and move from the United States to a destination outside the United States is exempt from the provisions of 49 U.S.C. subtitle IV, except that carriers must continue to comply with the

Commission's accounting and reporting requirements. The STCC reference is to Standard Transportation Commodity Code Tariff 6001-T, effective January 1, 1992.

(c) The exemptions stated in paragraphs (a) and (b) of this section will remain in effect unless modified or revoked by subsequent order of this Commission.

[FR Doc. 92-16764 Filed 7-15-92; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register

Vol. 57, No. 137

Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

July 10, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

#### Revision

#### *Agricultural Stabilization and Conservation Service*

7 CFR Parts 777, 1477 and 1413—

Disaster Payments and Disaster Assistance Programs

ASCS-574, 574-1, 658; CCC-441, 441A, 441W, 441SU, 441WR, 440

On occasion

Farms; 15,318,001 responses; 3,829,501 hours

Charles Cox (202) 720-8688

#### *Agricultural Marketing Service*

7 CFR Part 997—Peanuts Handled by Persons not Subject to the Peanut Marketing Agreement

Form FV-117 through Form FV-117-10 Recordkeeping; On occasion; Weekly; Monthly; Annually

Businesses or other for-profit; Small businesses or organizations; 2,460 responses; 884 hours

Mark Hessel (202) 720-8920

#### *Agricultural Stabilization and Conservation Service*

7 CFR Parts 795, 1497 and 1498—Farm Operating Plan for Payment Limitation Review and Determination of Eligibility of Foreign Individuals or Entities to Receive Program Benefits ASCS-561, 561A, 561B, CCC-501A, 501B, 502A, 502B, 502C, 502D, 502E

Annually

Farms; 356,800 responses; 307,985 hours; Dan McGlynn (202) 690-0926

#### *Agricultural Stabilization and Conservation Service*

7 CFR part 752—Water Bank Program Regulations

ASCS-691, ASCS-692, and ASCS-817 On occasion

Individuals or households; Farms; 7,000 responses; 1,466 hours

Millie Crabtree (202) 720-4053

#### Extension

#### *Food and Nutrition Service*

Requisition for Food Coupon Books FNS-280

On occasion

State or local governments; 10,150 responses; 5,075 hours

Asher S. Bryte (703) 305-2949

#### *Foreign Agricultural Service*

Request for Vessel Approval/Request for Vessel Approval (Cotton)

Form CCC-105; Form CCC-105 (Cotton) On occasion

Businesses or other for-profit; Small businesses or organizations; 251 responses; 314 hours

Judith A. Demetriades (202) 720-6711

#### New Collection

#### *Economic Research Service*

Survey of Buyers' Preference for Organic and Pesticide-Residue-Free Tomatoes One time survey

Business or other for-profit; Small businesses or organizations; 50 responses; 38 hours

Steve Payson (202) 219-0456

#### *Food and Nutrition Service*

Simplified Application/Standardized Benefit Evaluation

One time survey

Individuals or households; State or local governments; 400 responses; 67 hours

Dr. Gary W. Bickel (703) 305-2125

#### Reinstatement

#### *Food and Nutrition Service*

Participation of Charitable Institutions in the Food Distribution Program

FNS Instruction 706-1

Annually

State or local governments; 54 responses; 108 hours

Robert DeLorenzo (703) 305-2660

#### *Soil Conservation Service*

Volunteer Program—Earth Team

SCS-PER-001, SCS-PER-002, SCS-PER-003, SCS-PER-004

On occasion

Individuals or households; Farms;

Federal agencies or employees; Non-profit institutions; 7,500 responses; 750 hours

Jeff Anliker (202) 720-0430

Larry K. Roberson,

Departmental Clearance Officer.

[FR Doc. 92-16776 Filed 7-15-92; 8:45 am]

BILLING CODE 3410-01-M

#### Forest Service

Katka Timber Sale; Idaho Panhandle National Forests, Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

**SUMMARY:** The notice is hereby given that J.W. Associates Inc., under contract to the Forest Service, is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Katka Ridge/Boulder Creek area. This area is located approximately eight air miles east of Bonners Ferry, Idaho, on the Bonners Ferry Ranger District. Part of the proposed timber harvest and road construction are proposed within the Katka Peak Roadless Area (No. 1-157).

**DATES:** A public meeting/open house will be held at the Bonners Ferry Firehall Conference Room in Bonners Ferry, Idaho, from 12 p.m. to 8 p.m. on August 6, 1992. Formal presentations regarding the proposal will be made at this meeting at the times of 12:15, 3, 5, and 7 p.m. Written comments concerning the scope of the analysis must be received on or before August 31, 1992.

**ADDRESSES:** Send written comments to Jessica Wald, J.W. Associates Inc., 2006 Broadway, suite 305, Boulder, CO 80302.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS should be directed either to the Forest Service contact, Mark Grant, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, Idaho, 83805, Phone: (208) 267-5511, or to Jessica Wald, J.W. Associates Inc., Phone: (303) 447-1308.

**SUPPLEMENTARY INFORMATION:** These management activities would be administered by the Bonners Ferry Ranger District of the Idaho Panhandle National Forests in Boundary County, Idaho. The EIS is being prepared by J.W. Associates Inc. with input from the Forest Service. Representatives from both J.W. Associates Inc. and the Forest Service will be available for comment during scoping and preparation of the EIS. The Forest Service will issue the record of Decision.

This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) for achieving the desired future condition for this area. The purpose and need for the proposed action is to (1) foster forest regulation; (2) improve growth and yield of the desired species and size in the study area; and (3) provide for the area's share of the Allowable Sale Quantity. The process used in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

J.W. Associates Inc., together with Forest Service, invites written comments and suggestions on the issues and

management opportunities in the area being analyzed. Prior to submitting comments, however, it should be noted that this is a reissue of a notice originally published in the **Federal Register** on April 3, 1989. All comments which were previously received that addressed the original notice have been retained on file and will be considered during the current scoping process. For most effective use, any new comments should be sent to J.W. Associates Inc. within 45 days from the date of this publication in the **Federal Register**. A public meeting to receive input from interested individuals or organizations will be held in Bonners Ferry, Idaho.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

#### Management Area 2

Consists of lands designated for timber production within identified grizzly bear habitat. The management goal is to manage identified grizzly bear population while providing for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, reduce potential for bear/human conflicts, provide for dispersed recreation opportunities consistent with grizzly bear habitat requirements and meet visual quality objectives;

#### Management Area 3

Consists of lands designated for timber production within identified grizzly bear habitat and big game winter range. The goal is to manage identified grizzly bear habitat to support the Idaho Panhandle National Forest's share of recovered grizzly bear population and projected big game populations through scheduled timber harvest as well as provide for soil and water protection, dispersed recreation consistent with wildlife habitat needs, and visual quality;

#### Management Area 9

Consists of areas of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials and meet visual quality objectives;

#### Management Area 16

Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of

natural channels, and certain vegetation and wildlife communities) while producing other resource outputs;

#### Management Area 19

Consists of lands which have a high value for semi-primitive recreation as well as timber production. Management goals are to manage the semi-primitive recreation setting in a near-natural appearing condition as well as manage wildlife habitat and timber through low levels of harvest with minimum interior roads, provide protection for soil and water protection, visual quality, and provide a semi-primitive environment and elk security area through road standards and management of long-term closure.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Katka Peak roadless areas would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

J.W. Associate Inc. will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with J.W. Associates Inc., or Forest Service officials, at any time during the analysis. Forest Service officials will remain available for consultation following publication of the Final EIS and prior to the decision. Two periods of time, however, are specifically identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and in the review of the Draft EIS (April, 1993).

During the scoping process, J.W. Associates Inc., along with the Forest Service, is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Draft EIS (DEIS) is expected to be available for public review in April, 1993. The public comment period on the DEIS will be 45 days from the date the Environmental Protection Agency

publishes the notice of availability in the *Federal Register*. All of the comments received will be analyzed and considered by J.W. Associates Inc. in preparing the Final EIS (FEIS). The FEIS is scheduled to be completed by October, 1993. The FEIS will include responses to received comments. The Bonners Ferry District Ranger who is the Forest Service's responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented by the Forest Service in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. is. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to J.W. Associates Inc. at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist J.W. Associates Inc. and the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Dated: July 7, 1992.  
Debbie Henderson-Norton  
District Ranger, Bonners Ferry Ranger  
District, Idaho Panhandle National Forests.  
[FR Doc. 92-16748 Filed 7-15-92; 8:45 am]  
BILLING CODE 3410-11-M

#### **Transfer of Administrative Jurisdiction; Eglin AFB, Florida**

**AGENCY:** Forest Service, USDA.  
**ACTION:** Notice of transfer of land.

**SUMMARY:** On May 28, 1991, the Secretary of the Air Force signed an order agreeing to the transfer of administrative jurisdiction of 510.5 acres of excess land at Eglin Air Force Base, Florida, consisting of 6 parcels, from the Department of the Air Force to the Department of Agriculture to be restored to National Forest System status. These lands previously had been a part of the Choctawhatchee National Forest.

This transfer was authorized by Public Law enacted in 1940, and an Executive Order executed on August 15, 1989.

**DATES:** This transfer was effective May 26, 1992.

**ADDRESSES:** A copy of the order of transfer as signed by the Secretary of Agriculture on May 26, 1992, accepting the return of this land is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090-6090.

**FOR FURTHER INFORMATION CONTACT:** David M. Sherman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1362.

Dated: July 7, 1992.  
Elizabeth Estill,  
Associate Deputy Chief.  
[FR Doc. 92-16689 Filed 7-15-92; 8:45 am]  
BILLING CODE 3410-11-M

#### **Proposed Fee Schedule for Communications Use Rental in the Pacific Northwest Region, Oregon and Washington**

**AGENCY:** Forest Service, USDA.  
**ACTION:** Notice of availability.

**SUMMARY:** The Forest Service hereby gives notice that it is proposing a revised schedule of rental fees for communication uses on National Forest System lands located in the Pacific Northwest Region.

**DATES:** Written comments on the proposed regional fee schedules should be received by July 31, 1992.

**ADDRESSES:** Copies of the schedule may be obtained by writing to the Regional Forester, Pacific Northwest Region, Robert Duncan Plaza, 333 SW. First Avenue, (P.O. Box 3623), Portland, Oregon 97208-3623, Attention: Director, Lands and Minerals.

**FOR FURTHER INFORMATION CONTACT:** Lisa Freedman, Lands Staff, phone (503) 326-7140 or Jim Galaba, Lands Staff, phone (503) 326-2921, Pacific Northwest Region, Robert Duncan Plaza, 333 SW. First Avenue, (P.O. Box 3623), Portland, Oregon 97208-3623.

**SUPPLEMENTARY INFORMATION:** On December 11, 1988, the Pacific Northwest Region of the Forest Service published in the *Federal Register* a fee schedule for electronic communication sites (51 FR 44646). That schedule set forth the annual rental fees for different types and intensities of communication uses for areas or zones with similar fees in the States of Oregon and Washington. The fee schedule required that it be updated every 5 years based on an updated market analysis. On September 17, 1990, the Region published in the *Federal Register* a notice that it was preparing a market survey to adjust the existing schedule of rental fees, as required in the original schedule (55 FR 38123).

The market analysis was completed by the Forest Service by collecting transaction data from other agencies, private fee appraisers, communication specialists, private landowners who own land under communications sites, courthouse records, National Forest communications site holders and other sources. A letter was sent to all communications site permit holders, informing them of the market analysis and asking for comments. The analysis provided the basis for the establishment of fair annual rent estimates.

The proposed fee schedule provides a rental fee for communication uses based on type of use for a given area or zone. The schedule was developed using sound business management principles and the market survey. The fee schedule will be adjusted every ten years based on an updated market analysis. The schedule is in accordance with the Federal Land Policy and Management Act of 1976 which requires private users of public lands to pay the fair market value of the use authorized. The Regional Forester will accept comments until July 31, 1992 on this proposed rental fee schedule for communications use.

Dated: July 1, 1992.

John E. Lowe,

Deputy Regional Forester.

[FR Doc. 92-16663 Filed 7-15-92; 8:45 am]

BILLING CODE 3410-11-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on Bilateral Textile Consultations with the Government of Oman on Certain Cotton and Man-Made Fiber Textile Products

July 13, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories for which consultations have been requested, call (202) 377-3740.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 29, 1992, under the terms of Section 204 of the agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Oman with respect to cotton and man-made fiber woven shirts and blouses, produced or manufactured in Oman.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Oman, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 341/641, produced or manufactured in Oman and exported during the twelve-month period which began on June 29, 1992 and extends through June 28, 1993, at a level of not less than 113,871 dozen.

A summary market statement concerning Categories 341/641 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 341/641, or to comment on domestic production or availability of products included in Categories 341/641, is invited to submit

10 copies of such comments or information to Auggie D. Tantiello, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Oman.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 341/641. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see *Federal Register* notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantiello,

Chairman, Committee for the Implementation of Textile Agreements.

#### Market Statement—Oman

Category 341/641—Women's and Girls Shirts and Blouses

June 1992

#### Import Situation and Conclusion

U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, from Oman surged to 117,133 dozen in the year ending in April 1992, 82 percent above the 64,294 dozen imported during the year ending April 1991. During the first four months of 1992, imports of Category 341/641 from Oman reached 52,066 dozen, 62 percent above the

32,084 dozen imported in January-April 1991.

The sharp and substantial increase in Category 341/641 imports from Oman is causing disruption in the U.S. market for cotton trousers, slacks, and shorts.

#### U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, declined in every year since 1987, falling from 23,838,000 dozen in 1987 to 16,078,000 dozen in 1991, a decline of 33 percent. U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, were volatile between 1987 and 1991, declining in 1988, increasing in 1989, dropping again in 1990, and increasing in 1991. In 1991, Category 341/641 imports were at a level of 21,451,000 dozen, 5.5 percent below the 22,706,000 dozen level in 1987. During this period the domestic manufacturers' share of the U.S. women's and girls' cotton and man-made fiber woven shirt and blouse market fell from 51 percent in 1987 to 43 percent in 1991. The import to domestic production ratio increased from 95 percent to 133 percent.

In 1992, Category 341/641 imports surged, reaching 9,720,000 dozen in the first four months, 22 percent above the January - April 1991 level. If Category 341/641 imports continue to grow at this rate, they would reach a record level 29,160,000 dozen in calendar year 1992, 36 percent above the 1991 level and 28 percent above the 1987 level. If 1992 imports reach this level and domestic production remains at its 1991 level, the ratio of imports to domestic production would increase to 181 percent and the domestic manufacturers' share of this market would fall to 35 percent in 1992.

#### Duty-Paid Value and U.S. Producers' Price

Approximately 78 percent of Category 341/641 imports from Oman during the year ending April 1992 entered under HTSUSA numbers 6204.29.2040—women's and girls' artificial fiber woven blouses and shirts, other than yarn dyed, imported as parts of ensembles, and 6206.40.3030—other women's man-made fiber woven blouses and shirts, other than yarn dyed. These blouses and shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's and girls' woven blouses and shirts.

[FR Doc. 92-16745 Filed 7-15-92; 8:45 am]

BILLING CODE 3510-DR-F

# Amending and Adjusting Import Limits and Announcing the Requirement of an Export Declaration (Form ITA-370P) for Certain Textile Products Produced or Manufactured in Mexico

July 13, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending and adjusting limits and requiring form ITA-370P for certain textile products.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6711. For information on embargoes and quota re-openings, call (202) 377-3715.

## SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of letters dated July 1, 1992 and July 10, 1992, the Governments of the United States and the United Mexican States agreed to convert the specific limits for Categories 341/641, 635 and 669-B to designated consultation levels (DCLs) for 1992 and to increase the DCLs for certain categories. In addition, the current limits for Categories 317 and 604-A are being increased for special shift, reducing the limits for Categories 313 and 604-O/607-O, respectively, to account for the increases.

Further, the two governments agreed to establish a Special Regime specific limit for Categories 341/641 and 635, effective on January 1, 1993.

Beginning on September 1, 1992, U.S. Customs will start signing the first section of form ITA-370P for shipments of U.S. formed and cut fabric in Category 635 that are destined for Mexico and re-exported to the United States on and after January 1, 1993. On September 3, 1991, U.S. Customs began signing form ITA-370P for shipments of U.S. formed and cut fabrics in Categories 341/641 (see 56 FR 41830, published on August 23, 1991).

Shipments of goods in Categories 341/641 and 635 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to

the existing quota levels for Categories 341/641 and 635.

Textile products in Categories 341/641 and 635, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff Schedule item 9802.00.8010, chapter 61 statistical note 5 and chapter 62 statistical note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 341/641 and 635 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico in order to qualify for entry under the Special Regime.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65243, published on December 16, 1991.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the exchange of letters, but are designed to assist only in the implementation of certain of their provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

## Committee for the Implementation of Textile Agreements

July 13, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 13, 1992, you are directed to amend the limits for the categories listed below. The Special Regime limit for Category 633 remains unchanged.

Category	Amended twelve-month limit <sup>1</sup>	
Sublevels in Group I		
313.....	23,090,000 square meters.	
317.....	18,287,968 square meters.	
Limits not in a group		
335 (Special Regime).....	270,000 dozen.	
341/641.....	1,100,000 dozen of which not more than 303,081 dozen shall be in Categories 341-Y/641-Y <sup>2</sup> .	
347/348/647/648 (Special Regime).....	5,400,000 dozen.	
351/651 (Special Regime).....	420,000 dozen.	
359-C/659-C <sup>3</sup> (Special Regime).....	2,450,000 kilograms.	
604-A.....	2,120,556 kilograms.	
604-O/607-O <sup>4</sup> .....	979,548 kilograms.	
635.....	350,000 dozen.	
669-B <sup>5</sup> .....	1,000,000 kilograms.	
670.....	3,600,000 kilograms.	
Normal Regime Categories (Not subject to the Special Regime)		
335 (sublimit).....	100,000 dozen.	
347/348/647/648.....	1,000,000 dozen.	
351/651.....	120,000 dozen.	
359-C/659-C (sublimit).....	400,000 kilograms.	
633 (sublimit).....	12,000 dozen.	

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1991.

<sup>2</sup> Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

<sup>3</sup> Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

<sup>4</sup> Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A); Category 607-O: all HTS numbers except 5509.53.0030 and 5509.53.0060 (Category 607-Y).

<sup>5</sup> Category 669-B: only HTS numbers 6305.31.0020 and 6305.39.0000.

Beginning on September 1, 1992, you are directed to begin signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Category 635 that are destined for Mexico and re-exported to the United States on and after January 1, 1993. In a letter dated August 19, 1991, you were directed to begin signing form ITA-370P for shipments of U.S. formed and cut parts in Categories 341/641. Shipments of goods in Categories 341/641 and 635 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota level for Categories 341/641 and 635.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-16809 Filed 7-15-92; 8:45 am]

BILLING CODE 3510-DR-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Public Comment

**AGENCY:** Defense Systems Management College, DOD.

**ACTION:** Notice for public comment.

**SUMMARY:** In the November 6, 1991 Federal Register, Vol. 56 No. 215, p. 56635, the DoD Acquisition Law Advisory Panel announced six general categories of statutes under review. As part of that review, the Panel has determined the need to specifically address those acquisition statutes governing and/or impacting the DoD international acquisition arena.

The panel is interested in inputs from both the acquisition community and the public at large relative to the following international acquisition issues:

- (1) Buy American Act (Domestic Preferences) (41 U.S.C. chapter 1)
- (2) Statutory/DoD Source Restrictions (Various Authorization and Appropriations Acts)
- (3) Balance of Payments Program (10 U.S.C. chapter 148)
- (4) Defense Production Act 50 U.S.C. appendix)
- (5) Defense Industrial Base (10 U.S.C. chapter 148)
- (6) Trade and Trade Agreements Acts (19 U.S.C. chapters 12 and 13)
- (7) Cooperative Programs (10 U.S.C. chapter 138)
- (8) Reciprocal Procurement Memoranda of Understanding (MOUs) (19 U.S.C. chapter 13)
- (9) Foreign Military Sales (FMS) and Security Assistance (22 U.S.C. chapters 32 and 39)
- (10) Export Controls and Licensing (50 U.S.C. appendix and 22 U.S.C. chapter 39)
- (11) Technology Transfer and Offsets (10 U.S.C. chapter 148)
- (12) Standardization and Competition (10 U.S.C. chapter 137 and 145)

Panel members are most desirous of information concerning the impacts of these statutes at the working level both within the government and within industry. Anyone having such information is encouraged to contact Mr. Bill Mounts, Defense Systems

Management College/CM-AL, 8580 Cinderbed Road, suite 800, Newington, VA 22122, (703) 355-2665.

Dated: July 13, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-16743 Filed 7-15-92; 8:45 am]

BILLING CODE 3810-01-M

#### DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Meeting

**AGENCY:** Defense Systems Management College.

**ACTION:** Notice of meeting.

**SUMMARY:** Open to the public on August 13, 1992 and August 25, 26 and 27, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

For further information contact Linda Snellings at (703) 355-2665.

Dated: July 13, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-16744 Filed 7-15-92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

#### Finding of No Significant Impact; Fermilab Main Injector, Fermilab National Accelerator Laboratory; Batavia, IL

**AGENCY:** U.S. Department of Energy.

**ACTION:** Finding of No Significant Impact (FONSI).

**SUMMARY:** The U.S. Department of Energy (DOE) has prepared an Environmental Assessment (EA), DOE/EA-0543, for the proposed construction and operation of the Fermilab Main Injector (FMI) accelerator at the Fermilab National Accelerator Laboratory (Fermilab) in Batavia, Illinois. The accelerator will be housed in a ring enclosure which would have a circumference of about two miles. The FMI complex will include the necessary beamlines to connect to existing facilities, service buildings, an assembly building, and a new 345 kV substation with connecting electric power lines. The proposed action will include cooling ponds, access roads, service utilities, and landscaping. The FMI construction will affect 135 acres of the 6800-acre Fermilab site. Completion of the

proposed action will make it possible to realize the full scientific potential of Fermilab's high energy physics well into the 21st century.

On April 22, 1992, the DOE published a Proposed Finding of No Significant Impact on the proposed FMI project in the Federal Register (57 FR 14707) for a 30-day public comment period. The comment period closed on May 22, 1992. No comments were received.

Based on the analysis in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore, the preparation of an Environmental Impact Statement is not required.

#### Description of the Proposed Action

The proposed action consists of the construction and operation at Fermilab of a 150 GeV Main Injector accelerator and associated facilities, including beamlines to connect to the existing Tevatron, Antiproton Source, and Fixed Target experimental areas. It will replace the 20-year-old Main Ring accelerator that is housed in the 4-mile circumference Tevatron ring enclosure. Many of the components of the Main Ring accelerator will be reused in the FMI.

Luminosity is a term used to measure the rate and density of interactions of counter-rotating beams of particles at their collision areas. The primary goal of the proposed project is to increase the luminosity of antiproton-proton interactions at the two existing Fermilab collider detector facilities by as much as five-fold. It will also increase the intensity of protons for fixed target Tevatron operations by about three-fold. Specifically provided for in the scope of the proposed project are:

a. Construction of the ring enclosure, service buildings, utilities, and fabrication of new technical components, including dipole magnets and power supplies.

b. Construction of beamline enclosures, service buildings, utilities, and technical components required to implement an 8 GeV Booster-to-FMI beam line, 150 GeV proton and antiproton FMI-to-Tevatron beam transfer lines, and a 120 GeV FMI-to-Antiproton Production Target beamline.

c. Fabrication of technical components required to implement the delivery of 120 GeV beam from the FMI to the Fixed Target research areas.

d. Modifications to the F-Zero section of the Tevatron which are required for

installation of the 150 GeV proton and antiproton transfer lines.

e. Construction of an assembly building to house the fabrication, assembly and quality assurance of technical components.

f. Construction of a new 345 kV substation and approximately 2½ miles of power lines for delivery of electric power to the FMI site.

#### Alternatives

Two alternatives to the proposed action are considered in the EA: (1) No action; and (2) construction at other sites within Fermilab. Taking no action would mean not constructing the FMI accelerator, and continuing operations at Fermilab under current management practices. The no action alternative would result in no alteration of wetlands or the floodplain of Indian Creek. Because of technical constraints associated with the design of beamlines, the FMI must be sited at one of the six straight sections of the Tevatron. Siting the FMI along a straight section of the Tevatron, inside of the main ring, would involve the disturbance of approximately 27 acres of wetlands, a site listed in National Register of Historic Places, and almost all of the reconstructed native prairie. This second alternative is technologically and environmentally unacceptable.

#### Environmental Impacts

The EA analyzes the impacts of construction and operation of the FMI. DOE has developed a Mitigation Action Plan (MAP) for implementation of mitigative measures designed to minimize the significance of potential impact. The MAP is included as appendix C of the EA. The following is a summary of the environmental consequences of the proposed action.

#### Floodplain and Wetlands Impacts/ Statement of Findings

Because the proposed action is located in a floodplain/wetlands area, Executive Orders 11988 and 11990, and 10 CFR Part 1022, compliance with Floodplain/Wetlands Environmental Review Requirements, apply. This paragraph constitutes the Statement of Findings required by E.O. 11988 and 10 CFR 1022. The proposed action is described above; the location map is included as Figure 4.1.3.1 of the EA. Because of technical constraints associated with the design of beamlines, the FMI must be sited at one of the six straight sections of the Tevatron which encroach on the floodplain/wetlands. The selected alternative alters the least amount of wetland acres (7.14 acres). The construction of the FMI will require

permanently filling about six acres of wetlands. The FMI has been designed to minimize the impact on wetlands. The plan is to construct about eight and one-half acres of new wetlands to offset the filled wetlands. On August 13, 1991, the U.S. Army Corps of Engineers (COE) issued DOE a permit pursuant to Section 404 of the Clean Water Act to fill the wetlands. On June 4, 1991, the Illinois Environmental Protection Agency issued DOE a water quality certification pursuant to Section 401 of the Clean Water Act. The third agency involved in the joint permit application, the Illinois Department of Transportation/Division of Water Resources (IDOT/DWR), has reviewed the proposed alteration of Indian Creek and its floodplain, and has given preliminary approval. IDOT/DWR must approve the final construction drawings before ground breaking can commence. A Floodplain/Wetlands Assessment, incorporated in the EA, analyzes the proposed action's effect on the wetlands, and the compensatory measures that would be taken. The Floodplain/Wetlands Assessment analyzes the disturbance to Indian Creek's existing 100-year floodplain and the mitigation measures that will be taken to compensate for that disturbance. No negative impacts due to flooding are expected from construction of the FMI. In accordance with the DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), a Notice of Floodplain and Wetland Involvement was published in the Federal Register on June 11, 1991 (56 FR 26806); no comments were received. Based on the analysis in the Floodplain and Wetlands Assessment, the DOE has found that the only practicable alternative is to site the FMI in a relatively small portion of the floodplain of Indian Creek. A replacement wetland (totaling 8.55 acre) will be constructed adjacent to Indian Creek. The new wetland will be constructed in the same watershed as the wetlands that will be disturbed. The replacement wetland will support hydric soils and will be graded to match the grade of the adjacent wetland to ensure sufficient hydrology for wetland establishment and success. Soil removed from the disturbed wetlands will be utilized to provide a seedbank for the created wetlands. Saplings of silver maple and other species that are characteristic of the adjacent wetlands will be planted. The FMI project will include the creation of 29 acre-feet of floodwater storage capacity to compensate for construction of the FMI within the floodplain. DOE will maintain the existing watershed characteristics within the project site

and the surrounding areas. With the mitigation measures to compensate for the disturbance, no significant impacts are expected.

#### Impacts to Ecology

Experts in birds, plants, insects, amphibians, reptiles and mammals have conducted field surveys in the FMI construction area. Suitable habitat and the presence or absence of the listed species have been recorded; the reports are referenced in the EA. No threatened or endangered species will be affected by FMI construction or operation. As is discussed in the EA, particular attention has been paid to a great blue heron rookery inside the proposed FMI ring area, which was used until the summer of 1990. In 1991, the herons did not return to this area but used another nesting area on the Fermilab site. An ornithologist has formulated recommendations concerning the rookery inside the proposed FMI and other migratory fowl in the area. The recommendations (including a plan for construction date restrictions) will be followed by DOE as part of the proposed action if the herons return to the rookery inside the FMI area.

#### Radiation Impacts

Operation of the proposed FMI will result in insignificant amounts of radioactive emissions to the air and releases to soils. Fermilab's radionuclide emissions to the atmosphere after the FMI becomes operational would result in a dose to a hypothetical individual at the site boundary of 0.33 mrem/yr under typical operating conditions. The maximum dose at the site boundary from the current Tevatron operation with the Main Ring accelerator is estimated to be 0.029 mrem/yr. Even with conditions maximized, the cumulative emissions for Fermilab with the FMI will result in a dose to a hypothetical individual at the site boundary of 1.0 mrem/yr. Thus, Fermilab's radionuclide emissions as a result of FMI operations would result in a dose to a member of the public of less than about one-tenth of the U.S. EPA's standard of 10 mrem/yr for airborne radionuclide emissions from DOE facilities.

The proposed FMI has been designed to ensure ample protection to Fermilab employees and to the public from penetrating radiation. Appropriate shielding will be used to prevent any significant increase over historical levels. It is anticipated that FMI operations will not result in detectable levels of accelerator-produced radionuclides in surface waters,

sediments, or groundwater. No significant off-site or on-site impact from an accident is expected.

#### Cumulative Impacts

No significant cumulative or long-term environmental effects are expected to result from the proposed action. The power consumption of Fermilab would be increased by 25% over that consumed in fiscal year 1990 but could be met by existing capacity.

#### Determination

Based on the analyses in the EA, the DOE has determined that the construction and operation of the FMI at Fermilab does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, an Environmental Impact Statement is not required.

#### Public Availability

Copies of this EA (DEA/EA-0543) are available from: Andrew E. Mravca, Manager, Batavia Area Office, U.S. Department of Energy, P.O. Box 500, Batavia, Illinois 60510 (708) 840-3281.

For further information regarding the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

Issued in Washington, DC, this 6th day of July, 1992.

Peter Brush,

Principal Deputy Assistant Secretary,  
Environment, Safety and Health.

[FR Doc. 92-16801 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

#### Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Thursday, July 23, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of a joint government/industry Design Group, which has been established by the IAE's Standing Group

on Emergency Questions for the preparation of the Seventh IEA Allocation Systems Test (AST-7).

The agenda for the meeting is under the control of the Design Group. It is expected that the following draft agenda will be followed:

1. Summary Record of the last meeting.
2. Training program for members of the National Emergency Sharing Organizations (NESOs) and Reporting Companies.

3. Operational phase of AST-7; resolution of technical and organizational issues.

4. AST-7 Test Guide.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB, their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, July 13, 1992.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 92-16915 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Project Nos. 67-055, et al.]

#### Hydroelectric Applications (Southern California Edison Company, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Amendment of License.

- b. *Project No:* 67-055.

- c. *Date Filed:* April 23, 1992.

- d. *Applicant:* Southern California Edison Company.

- e. *Name of Project:* Big Creek No. 2A and No. 8 Project.

- f. *Location:* The project is located on Big Creek and the South Fork San Joaquin River, in Fresno County, California.

- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

- h. *Applicant Contact:* Mr. R.R. Schroeder, Southern California Edison Company, P.O. Box 800, 2244 Walnut

Grove Avenue, Rosemead, CA 91770, (818) 302-1564.

- i. *FERC Contact:* Mohamad Fayyad, (202) 219-2665.

- j. *Comment Date:* August 20, 1992.

- k. *Description of Amendment:* The licensee requests approval of an as-built revised exhibit M. The as-built exhibit M describes changes in the ratings of the main turbines, generators and transformers where they have occurred, and minor changes in the automated control systems.

The changes to project generating units, which occurred due to improvements to various turbines and generators between 1984 and 1987, are as follows:

- An increase in the total installed capacity of the project from the authorized 338,300 kW to 373,320 kW. While the total nameplate capacity rating of the generators is 384,820 kW, the project can only operate up to a capacity of 373,320 kW. This is due to the fact that the power output of some generating units is limited by the turbines capacities; some turbines' capacities are less than the generators capacities connected to them.

- A 20-kW turbine/generator unit installed in the Shaver Lake upper dam gallery, which is used to recover the energy of minimum flow water released from the reservoir through the dam.

- The total hydraulic capacity of the project increased by 216 cfs; due to efficiency improvements, the hydraulic capacities of some units decreased, and only the hydraulic capacity of unit No. 2 of Big Creek Powerhouse No. 8 increased by 240 cfs.

1. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2. a. *Type of Application:* Amendment of License.

- b. *Project No:* 2175-005.

- c. *Date Filed:* April 23, 1992.

- d. *Applicant:* Southern California Edison Company.

- e. *Name of Project:* Big Creek No. 1 and No. 2 Project.

- f. *Location:* The project is located on Big Creek tributary to the San Joaquin River, in Fresno, Tulare, and Kern Counties, California.

- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

- h. *Applicant Contact:* Mr. R.R. Schroeder, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302-1564.

- i. *FERC Contact:* Mohamad Fayyad, (202) 219-2665.

- j. *Comment Date:* August 20, 1992.

k. *Description of Amendment:* The licensee requests approval of an as-built revised exhibit M. The as-built exhibit M describes changes in the ratings of the main turbines, generators and transformers where they have occurred, and minor changes in the automated control systems.

The changes to project generating units, which occurred due to improvements to various turbines and generators between 1985 and 1991, are as follows:

- An increase in the total installed capacity of the project from the authorized 124,750 kW to 136,750 kW; While the total nameplate capacity rating of the generators is 138,250 kW, the project can only operate up to a capacity of 136,750 kW. This is due to the fact that the power output of some generating units is limited by the turbines capacities; some turbines' capacities are less than the generators capacities connected to them.

- The total hydraulic capacity of the project increased by 64 cfs.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 7614-003.

c. *Date Filed:* June 17, 1992.

d. *Applicant:* Howard E. Geer.

e. *Name of Project:* Shingle Mill.

f. *Location:* On the East Branch of the Ompompanoosuc River near West Fairlee in Orange County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Howard E. Geer, 6 Hope Drive, Darien, CT 06820.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219-2814.

j. *Comment Date:* August 21, 1992.

k. *Description of Application:* The project consists of: (1) The existing 9-foot-high Shingle Mill Dam; (2) a 0.45-acre reservoir at the normal maximum surface elevation of 93 feet msl with a storage capacity of 2.5 acre-feet; (3) a 40-foot-long, 3-foot-diameter penstock; (4) a powerhouse with an installed generating capacity of 12 kW; and, (5) a 300-foot-long transmission line.

The applicant states that at the present time, there is no possibility that the project can be operated without unacceptable financial losses.

l. *This notice also consists of the following standard paragraphs:* B and C.

4a. *Type of Application:* Minor License.

b. *Project No.:* 11217-000.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Richard G. MacKowiak.

e. *Name of Project:* Still River Hydroelectric Project.

f. *Location:* On the Still River, Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. (a)-825(r).

h. *Applicant Contact:* Mr. Richard G. MacKowiak, 7 Stone Mill Lane, Eastford, CT 06242, (203) 974-1803.

i. *FERC Contact:* Mary Golato (202) 219-2804.

j. *Comment Date:* September 7, 1992.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D4.

l. *Description of Project:* the proposed project would consist of the following facilities. (1) An existing concrete gravity dam about 70 feet long and 10 feet high, with a 70-foot-long overflow spillway; (2) an existing concrete abutment; (3) an existing 15-foot-long concrete intake structure with one 52-inch-wide by 45-inch-high gate, which controls inflow to the culvert; (4) an existing 4-foot-wide by 3-foot-high and 14-foot-long concrete culvert; (5) an existing 200-foot-long and 7-foot-wide intake canal, faced with stone walls; (6) a proposed trashrack 10 feet long and 6 feet wide, with 1.5 inch clear spacing, located at the end of the intake canal; (7) a proposed 70-foot-long and 4-foot-diameter steel penstock; (8) a proposed reinforced concrete powerhouse 12 feet by 12 feet by 15.5 feet high, with one 37.4-KW turbine-generator unit; (9) an approximately 400-foot-long and 10-foot-wide tailrace; (10) a proposed 300-foot-long overhead transmission line; and (11) appurtenant facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D4.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Mr. Richard G. MacKowiak, 7 Stone Mill Lane, Eastford, CT 06242.

5a. *Type of Application:* Preliminary Permit.

5b. *Project No.:* 11297-000.

5c. *Date Filed:* June 1, 1992.

5d. *Applicant:* City of Oglesby, Illinois.

5e. *Name of Project:* Marseilles Hydroelectric Project.

5f. *Location:* On the Illinois River, near Marseilles, La Salle County, Illinois.

5g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

5h. *Applicant Contact:* Mr. Ken Hach, 706 Putnam Street, Peru, IL 61354, (815) 224-4117.

5i. *FERC Contact:* Michael Dees (202) 219-2807.

5j. *Comment Date:* September 10, 1992.

5k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and would consist of: (1) An existing intake canal; (2) reconstructing an existing concrete powerhouse to house two to four hydropower units with a combined capacity of 10.0 MW; (3) a transmission line 400 feet long; and (4) appurtenant facilities. The estimated annual energy production is 60 GWh. The project energy would be used by the applicant or sold to utilities or private industry. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$100,000.

5l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6a. *Type of Application:* Preliminary Permit.

6b. *Project No.:* 11298-000.

6c. *Date Filed:* June 1, 1992.

6d. *Applicant:* Blue Diamond North Associates.

6e. *Name of Project:* Blue Diamond North Pumped Storage Project.

6f. *Location:* Partially on lands administered by the Bureau of Land Management on and near Blue Diamond Hill approximately 5 miles west of Las Vegas in Clark County, Nevada. Sections 13, 14, 15, 16, 20, 21, 22, 23, and 24 in T21S, R59E; sections 16, 17, 18, 19, 20, and 21 in T21S, R60E.

6g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

6h. *Applicant Contact:* Mr. David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (410) 268-8820.

6i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

6j. *Comment Date:* September 11, 1992.

6k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 56-foot-high concrete dam and 52-acre upper reservoir; (2) a 144-inch-diameter, 7,700-foot-long penstock connecting the upper reservoir with a lower reservoir; (3) a 34-foot-high concrete dam and 52-acre lower reservoir; (4) a powerhouse containing two 100-MW generating units; (5) a 5-mile-long transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be \$250,000.

6l. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.*

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11301-000.

c. *Date Filed:* June 8, 1992.

d. *Applicant:* Fall Line Hydro Company, Inc.

e. *Name of Project:* Carter's Reregulation Dam.

f. *Location:* At the U.S. Corps of Engineers Carters Reregulation Dam on the Coosawattee River near Calhoun in Murray County, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Michael P. O'Brien, P.O. Box 957265, Duluth, GA 30136, (404) 995-0891.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219-2814.

j. *Comment Date:* September 4, 1992.

k. *Description of Project:* The proposed project would utilize the existing Corps dam and would consist of: (10) An 85-85-foot-long, 9-foot-diameter penstock; (20) a powerhouse containing one generating unit with an installed capacity of 3,500 kW; and, (3) a ½-mile transmission line. The estimated average annual energy production of the project is 16,500 MWh and the cost of the studies performed under the permit would be \$5,000.

l. *Purpose of Project:* Power produced would be sold to the Municipal Electric Authority of Georgia.

m. *This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.*

#### Standard paragraphs

A2. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the

competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an equivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An addition copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

**D4. Filing and Service of Responsive Documents**—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 8, 1992 for Project No. 11217-000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 20, 1992 for Project No. 11217-000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters this title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this

application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 10, 1992 Washington, DC.  
[FR Doc. 92-16826 Filed 7-15-92; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. JD92-07663T Texas-60]

**State of Texas, NGPA Determination by Jurisdictional Agency Designating Tight Formation**

July 10, 1992.

Take notice that on July 2, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Jicarilla (I-2) Formation underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is located within Railroad Commission District 4 and lies within the northern parts of the N. Flores Survey, A-61, Porcion 75; the L. Flores Survey, A-576, Porcion 76; the P. Flores Survey, A-577, Porcion 77 and the D. Ramirez Survey, A-563, Porcion 78.

The notice of determination also contains Texas' findings that the referenced portion of the Jicarilla (I-2) Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16818 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07662T Texas-59]

**State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation**

July 10, 1992.

Take notice that on July 2, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to

§ 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation (Wilcox Basal House, Wilcox Sand 4 and Wilcox Sand 5 Formations) underlying a portion of Duval County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is located within Railroad Commission District 4 and consists of approximately 7,000 acres including all or portions of the following surveys:

Dolores Irr. & Agri. Co. No. 78, A-854  
J. Poitevent No. 201, A-919  
Garcia No. 204, A-1845  
J. Poitevent No. 205, A-921  
Adams No. 206, A-1807  
J. Poitevent No. 207, A-916  
J. Poitevent No. 211, A-920  
J. Foster, A-1641  
S. Alexander, A-685  
S.F. 13667

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16821 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07656T Wyoming-31;  
Docket No. JD92-07657T Wyoming-32]

**State of Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formations**

July 10, 1992.

Take notice that on July 6, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter and Bear River Formations underlying a portion of Sublette County, Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers two formations as described on the attached appendix.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the

referenced portions of the Baxter and Bear River Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,  
Secretary.

#### Appendix

##### *JD92-7656T Baxter Formation*

Wyoming-31 Approximately 2798.3 acres—  
88.6% Federal leases

*Township 27 North, Range 112 West, 6th P.M.*

Section 12: SW/4  
Section 13: W/2  
Section 24: N/2, SW/4  
Section 25: NE/4, SW/4  
Section 28: All  
Section 38: W/2

*Township 27 North, Range 111 West, 6th P.M.*

Section 31: S/2, NE/4  
Section 32: SW/4

##### *JD92-7657T Bear River Formation*

Wyoming-32 Approximately 2240 acres—  
85.7 Federal leases

*Township 27 North, Range 112 West, 6th P.M.*

Section 12: SW/4  
Section 13: W/2  
Section 24: N/2, SW/4  
Section 25: NE/4, SW/4  
Section 28: All  
Section 38: W/2

[FR Doc. 92-16810 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

#### Docket No. CP91-2704-002]

#### **Blue Lake Gas Storage Co.; Proposed Changes in FERC Gas Tariff**

July 10, 1992.

Take notice that on June 30, 1992, Blue Lake Gas Storage Company (Blue Lake), 1 Woodward Avenue, Detroit, Michigan 48226, tendered for filing in Docket No. CP91-2704-002 the following tariff sheets which Blue Lake proposes to become effective September 1, 1992.

#### **Original Volume No. 1**

Original Sheet No. 1 through Original Sheet No. 158

Blue Lake states that these tariff sheets are being submitted to comply with the Commission's order issued May 1, 1992 in Docket No. CP91-2704-000. Blue Lake states that the proposed tariff

sheets represents the terms and conditions under which Blue Lake will provide natural gas storage service.

Blue Lake requests a waiver of § 154.22 of the Commission's Regulations to place the tariff sheets into effect on September 1, 1992 or such other date as the Commission deems appropriate, provided that the Gas Tariff shall be made effective by the in-service date of the facilities, which is projected to be April 1, 1993.

Blue Lake states that this filing has been served upon all parties listed on the official service list compiled by the Office of the Secretary at the Commission.

Any person desiring to be heard or to protest the referenced filing should on or before July 31, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16822 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket No. RP90-95-003 and RP90-95-004]

#### **Colorado Interstate Gas Co.; Compliance Filing**

July 10, 1992.

Take notice that on June 22, 1992, Colorado Interstate Gas Company (CIG) tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers resulting for the unused transportation credits in Docket No. RP90-95.

In its June 22, 1992 filing, CIG states that it is advising its customers and the Commission that it is in the process of recalculating certain of the interest payments made to customers electing to amortize their buyout-buydown obligations in the above-referenced docket. CIG states that it will make additional interest payments resulting

from those recalculations, as appropriate, and will be submitting work papers detailing the recalculations.

On June 23, 1992, CIG submitted for filing work papers detailing the recalculations and disposition of interest payments by CIG to certain of its affected customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16825 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket No. RP91-164-005]

#### **Granite State Gas Transmission, Inc.; Compliance Filing**

July 10, 1992.

Take notice that on July 2, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5309 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, containing changes in rates and tariff provisions for effectiveness on July 1, 1992:

#### **Second Revised Volume No. 1**

Sixteenth Revised Sheet No. 21  
Fourteenth Revised Sheet No. 25  
First Revised Sheet No. 32  
Third Revised Sheet No. 36  
First Revised Sheet No. 37  
First Revised Sheet No. 38  
First Revised Sheet No. 71  
Third Revised Sheet No. 123  
Third Revised Sheet No. 125  
Second Revised Sheet No. 126  
First Revised Sheet No. 127  
Third Revised Sheet No. 128  
Second Revised Sheet No. 129  
Second Revised Sheet No. 130  
First Revised Sheet No. 136  
Second Revised Sheet No. 221

Second Revised Sheet No. 222

First Revised Volume No. 2

First Revised Sheet No. 8

Original Sheet No. 8A

Second Revised Sheet No. 18

Original Sheet No. 18A

First Revised Sheet No. 19

Fourth Revised Sheet No. 28

Third Revised Sheet No. 29

Second Revised Sheet No. 39

Original Sheet No. 39A

First Revised Sheet No. 40

First Revised Sheet No. 62

First Revised Sheet No. 63

First Revised Sheet No. 73

According to Granite State, its filing is submitted in compliance with the provisions of the Stipulation and Agreement approved, as modified, in an order issued by the Commission on June 29, 1992 in Docket No. RP91-164-000, *et al.* It is further stated that the Stipulation and Agreement provided for revised Base Tariff non-gas cost rates and a revised rate design for all of Granite State's firm sales and transportation services to be effective prospectively, in two phases. Granite State states that the Phase 1 settlement rates and tariff provisions are proposed to become effective on the first day of the month following Commission approval of the settlement in accordance with the provisions of the Stipulation and Agreement.

According to Granite State, the gas cost components of the sales rates on Sixteenth Revised Sheet No. 21 reflect the adjusted gas costs in Granite State's revised quarterly purchased gas cost adjustment filing on July 1, 1992 in Docket Nos. TQ92-11-4-000 and TM92-17-4-000.

It is stated that the proposed rate changes and tariff provisions in this compliance filing are applicable to Granite State's jurisdictional sales and transportation services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers, the regulatory commissions of the States of Maine, Massachusetts and New Hampshire and the intervenors in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16820 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1281-021]

#### Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

July 10, 1992.

Take notice that on July 1, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing the tariff sheets listed on Appendix A attached to the filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective August 1, 1992.

Natural states the purpose of the filing is to comply with the Commission's order issued June 16, 1992 at Docket Nos. CP89-1281-019, *et al.* (June 16th Order). The June 16th Order approved as modified Natural's Stipulation and Agreement on Limited Extension of Gas Inventory Demand Charge filed April 3, 1992 in Docket No. CP89-1281-017. In addition, the Stipulation and Agreement revised the "availability" provision of Rate Schedules S-1, LS-2, and LS-3 so that any person is eligible to receive such service. Natural states that it also filed additional revisions to reflect wording revisions necessary because the availability provision was changed. These revisions are identified on Appendix B attached to the filing.

Natural has requested waiver of the Commission's orders and Regulations to the extent necessary to permit approval of these changes to become effective August 1, 1992.

Natural states that copies of the filing were served upon Natural's jurisdictional sales customers, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-16824 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

#### South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

[Docket No. RP89-225-017]

July 10, 1992.

Take notice that on July 1, 1992, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1991:

First Substitute Third Revised Sheet No. 16D  
First Substitute Third Revised Sheet No. 16T

South Georgia states that the purpose of this filing is to comply with the Commission's Letter Order issued in the captioned docket on January 27, 1992, requiring South Georgia to clarify its volumetric take-or-pay surcharge as terminating the earlier of five years or upon the recovery of \$1,700,000 of principal costs. This surcharge was approved by the Commission's order dated October 31, 1991, accepting South Georgia's uncontested settlement in this proceeding. South Georgia requests a waiver of the Commission's Regulations to make this filing at this time to correct South Georgia's inadvertent oversight of the Letter Order when it was issued.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16819 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-209-033, *et al.* and RP91-198-000]

#### United Gas Pipe Line Co.; Conference

July 9, 1992.

Pursuant to the Commission's order issued on July 2, 1992, an informal conference will be held to define and narrow the issues to be briefed in this

proceeding. The conference will be held on Monday, July 27, 1992, at 1 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,  
Secretary.

[FR Doc. 92-16670 Filed 7-15-92; 8:45 am]  
BILLING CODE 6717-01-M

[Docket Nos. TA92-1-43-004, TF92-3-43-001]

### Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 10, 1992.

Take notice that Williams Natural Gas Company (WNG) on June 29, 1992, tendered the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 to be effective May 1, 1992:

Substitute Eighth Revised Sheet No. 6  
Substitute Ninth Revised Sheet No. 6A  
Second Substitute Ninth Revised Sheet No. 6  
Second Substitute Tenth Revised Sheet No. 6A

WNG states that it made a compliance filing in the above referenced dockets on June 1, 1992. At the request of Commission staff, the instant filing is being made for pagination reasons and to make the dockets easier to track.

WNG states that copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 92-16823 Filed 7-15-92; 8:45 am]  
BILLING CODE 6717-01-M

### Office of Energy Research

#### Mitigation Plan for the International Thermonuclear Experimental Reactor (ITER) Project

**AGENCY:** Energy Research Office, Department of Energy.

**ACTION:** Resolution of comments and availability of final plan.

**SUMMARY:** The U.S. Department of Energy published a notice of a proposed plan for mitigating potential conflicts of interest under the ITER project for comment on December 10, 1991. This project will be funded by the Department of Energy's Office of Fusion Energy in the Office of Energy Research. Two sets of comments were received from industry representatives. The changes described below accommodate the comments received. With the inclusion of these comments, the mitigation plan is considered to be in final form and available for use by the ITER project participants. Copies of the full text of the mitigation plan can be obtained from the information contact below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Marton, Office of Fusion Energy, Office of Energy Research, Code ER-531, U.S. Department of Energy, Washington, DC 20585, (301) 903-4965.

**SUPPLEMENTARY INFORMATION:** ITER is a joint project of the United States, the European Communities, Japan, and the former Soviet Union. The goal of the project is the design and fabrication of scale model components for an engineering test reactor for fusion power development. The four parties are currently completing negotiations to enter the next phase of the project, Engineering Design Activities. These activities are expected to continue over a 6-year period (1992-1997) during which a detailed design and technology R&D will be carried out within the respective national programs.

The Mitigation Plan is proposed by the Department of Energy for the purpose of mitigating organizational conflicts of interest which might arise during the project. Copies of the final plan may be obtained from the information contact above.

The mitigation plan consists of the following sections:

- I. Background (including organization).
- II. Activities Relating to Hardware Procurements.
- III. Participation on Joint Central Team.
- IV. U.S. Home Team Activities (within the major categories of Physics Research, Design, and Technology Research).

V. Advisory Groups and Consultants (including responsibilities of the Home Team Leader to further mitigate any appearance of organizational conflicts of interest).

#### Resolution of Comments

As stated above, comments were received from two industrial firms. The respondents expressed concerns regarding sole-source contracting, dissemination of information, the potential conflict inherent in the principal physicist and principal engineer positions, the impact of the plan on the construction phase of the project, the availability of technical reports, and other remarks of a more editorial nature. A summary of the major changes to be made to the mitigation plan follows: (1) Sole source contracting—the ITER program will utilize competition in the award of its contracts. Should a sole source contract be justified, it will be advertised in the *Commerce Business Daily* and reference the fact that it is a departure from the mitigation plan; (2) dissemination of information—the plan will include the statement that any non-proprietary, technical information pertaining to ITER-related activities of the U.S. Home Team will be made freely available to all interested U.S. organizations, including U.S. industry, on a timely basis, in accordance with Annex C of the international agreement covering the EDA; (3) potential conflict inherent in principal physicist and principal engineer positions—the duties described for these positions have been tightly defined so as to exclude the potential for conflict. The principal physicist advises on matters relating to issues of plasma physics and physics experimentation. The principal engineer advises on matters relating to the design and operation of the ITER facility. These advisors to the U.S. ITER Home Team Leader may attend all meetings of the ITER Steering Committee, U.S. ISCUS meetings, and all U.S. ITER National meetings. They will undertake specific studies and technical analyses as requested by the ITER Home Team Leader. These positions will be part-time and estimated at 2-4 days per month. These advisors will be excluded from all discussions of competition-sensitive material, including budget planning discussions of the ITER Home Team Management and will not receive any information relating to proposed procurements which is not made generally available; and (4) impact of the plan on the construction phase of the project—the following statement will be added to the plan: It is the intention of

this plan to maximize competition and to avoid situations which would require firms participating in the EDA to be excluded from engaging in construction activities during the construction phase of ITER.

Issued in Washington, DC on July 10, 1992.  
James F. Decker,  
Deputy Director, Office of Energy Research.  
[FR Doc. 92-16803 Filed 7-15-92; 8:45 am]  
BILLING CODE 6450-01-M

## Office of Fossil Energy

[FE Docket No. 92-80-NG]

### EMC Gas Transmission Co.; Application for Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.  
ACTION: Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on June 23, 1992, by EMC Gas Transmission Company (EMC) requesting blanket authorization to import up to 30 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery. EMC intends to use existing facilities and will submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 17, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

#### FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0063.  
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** EMC is an Oklahoma corporation with its

principal place of business in Detroit, Michigan. EMC is engaged in the business of buying and selling natural gas and currently holds an export authorization [DOE/FE Opinion and Order No. 610, 1 FE ¶ 70,570 (April 27, 1992)]. EMC requests authority to import gas from Canada, either for its own account or on behalf of others, for sale to a range of U.S. buyers including commercial and industrial end users, and local distribution companies. EMC will purchase the gas under short-term, market-responsive contracts, and will import the gas at existing points along the United States/Canada border.

The decision on EMC's request for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in those guidelines. EMC asserts in its application that the proposed arrangement is competitive. Parties opposing EMC's request for import authorization bear the burden of overcoming this assertion.

#### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written

comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EMC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 10, 1992.  
Charles F. Vacek,  
Deputy Assistant Secretary for Fuels Programs, Office of Fuels Programs.  
[FR Doc. 92-16802 Filed 7-15-92; 8:45 am]  
BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Issuance of Decisions and Orders; During the Week of May 18, Through May 22, 1992

During the week of May 18 through May 22, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the

Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeal

*Chuck Hansen, 05/19/92, KFA-0277*

On April 13, 1989, Mr. Chuck Hansen filed an Appeal from a determination issued by the DOE's Albuquerque Operations Office (renamed the DOE Field Office/Albuquerque) in response to a request that Mr. Hansen submitted under the Freedom of Information Act (FOIA). In that determination, the Albuquerque Office withheld a portion of a document pursuant to Exemption 3 of the FOIA, on the basis that information concerning the design and capabilities of nuclear weapons is classified as Restricted Data under the Atomic Energy Act of 1954. On appeal, the DOE determined that (1) contrary to Mr. Hansen's assertion, the information has never been intentionally released by the DOE and the DOE has no knowledge of an inadvertent release and (2) the requested information in conjunction with other already released information would allow release of other valuable, classified information. Accordingly, the Appeal was denied.

*Dr. J.C. Laul, 05/19/92, LFA-0209*

Dr. J.C. Laul filed an Appeal from a determination issued by the DOE's Richland Operations Office (Richland). In his Appeal, Dr. Laul sought records pertaining to an internal personnel action taken by a DOE contractor. Dr. Laul had asked that the DOE obtain these records from the contractor and release them to him. The DOE found that the documents in question were not agency records and therefore were not subject to the FOIA's disclosure requirements. Accordingly, Dr. Laul's Appeal was denied.

*James L. Schwab, 05/21/92, LFA-0208*

James L. Schwab filed an Appeal from a denial, by the Deputy Director of the Office of Intergovernmental Affairs of the DOE's Albuquerque Field Office, of a fee waiver requested in conjunction with a Request for Information submitted under the Freedom of Information Act (FOIA) and the Privacy Act. In considering the Appeal, the DOE determined that when a Request for Information is made under both the FOIA and the Privacy Act, and both the initial determination and the fee waiver denial analyze the requests only under the FOIA, the DOE will review the denial of the fee waiver request only under the FOIA. The DOE also found that Mr. Schwab did not meet his burden of showing eligibility for a fee

waiver under the FOIA. Specifically, the DOE stated that when a requester, like Mr. Schwab in this case, already has possession of the document on which a fee waiver is sought, the requester must make a reasonably specific correlation appropriate to the case between the particular material and the FOIA fee waiver criteria or explain special circumstances why a more generalized reason should suffice. The DOE found that Mr. Schwab had not met either of these standards. Accordingly, the Appeal was denied.

*The Advocate, 05/20/92, LFA-0198*

The Advocate filed an Appeal from a determination, issued by the Director of the Division of Regulatory Compliance of the DOE's Office of Environmental Restoration and Waste Management, that denied the newspaper's Request for Information under the Freedom of Information Act. The applicant had sought records concerning the testing of the radiological contents of wastes that had been shipped to Rollins Environmental Services by the DOE's Savannah River Facility and by facilities operated by Martin Marietta. In his determination, the Director identified and released a number of documents. The newspaper argued that additional documents must exist. In reviewing this matter, DOE contacted the personnel at the Savannah River facility and at the Oak Ridge Operations Office who had conducted the search for responsive documents. These individuals indicated that the search of the Oak Ridge Operations Office has not been completed and that additional responsive documents pertaining to the Savannah River facility may be in storage. Under these circumstances, the Appeal was granted in part, and the matter was remanded for a search for additional responsive documents.

#### Refund Applications

*Apex Oil Co., Clark Oil & Refining Corp./Eugene Maas et al., 05/19/92, RF342-12 et al.*

The DOE issued a Decision and Order granting 45 Applications for Refund filed in the Clark Oil & Refining Corp. special refund proceeding. All of the applicants based their claims on reasonable estimated purchase volumes. The refunds granted totalled \$272,152.

*Masonite Corporation, 05/18/92, RF272-25593*

The DOE issued a Decision and Order granting an Application for Refund filed by Masonite Corporation, a manufacturer of hardboard building products, in the subpart V crude oil refund proceeding. A group of States

and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the pulp and paper industry was above to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, Masonite was found to be ineligible for a refund for its purchases of paint during the refund period. The refund granted to the applicant was \$360,168.

*Murphy Oil Corporation/Vine Hill Oil Company, Country Club Oil Company, Country Club Oil & Vine Hill, 05/22/92, RF309-1083, RF309-1084, RF309-1423*

The DOE issued a Decision and Order granting two Applications for Refund filed in the Murphy Oil Corporation special refund proceeding on behalf of Vine Hill Oil Company (Vine Hill) and Country Club Oil Company (Country Club) by Raymond Weyker, 50% stockholder of the two firms during the refund period. Mr. Weyker indicated in the applications that Inter City Oil Co., Inc. (Inter City) purchased Vine Hill and Country Club in 1976. Inter City subsequently filed a competing claim requesting a refund based upon the same purchases made by Vine Hill and Country Club during the refund period. The DOE determined from documents provided by Inter City that Inter City purchased certain assets of the two firms only, not the corporate stock, and that the right to a refund was not included among the assets sold. Therefore, Mr. Weyker and his partner, J.L. Hampson, retained the right to the refund for purchases made by Vine Hill and Country Club. The DOE determined that the application filed by Inter City be denied and the applications filed by Mr. Weyker on behalf of himself and J.L. Hampson's widow, Maxine Hampson, be granted based upon the firms' purchases of 1,275,422 gallons of Murphy products. The total amount of the refunds granted in this Decision and Order is \$1,508 (comprised of \$1,043 in principal and \$465 in interest).

*Texaco Inc./J.E. Dees Texaco, Dees Petroleum Products, 05/18/92, RF321-11734, RF321-11735*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The applications filed on behalf of J.E. Dees Texaco/Dees

Petroleum Products (Dees) contend that Dees was injured by Texaco's alleged violations of both the price and allocation regulations. Dees was granted a refund of \$4,421 based on the motor gasoline allocation for two service stations which Texaco failed to supply. This refund was calculated by multiplying the 188,121 gallons which Texaco failed to supply (and Dees was unable to replace) by \$0.0235 (the profit Dees was unable to realize on each gallon it failed to receive). The DOE concluded that Dees' general allocation claim, which involved various business practices of Texaco during the refund period, was covered by the presumption of injury for consignees adopted in the Texaco Decision as a general remedy for the allocation violations to which the Texaco consignees were subject. Therefore, Dees was eligible for a refund for its 9,720,098 consigned gallons based on the mid-range presumption of injury. Dees was also found eligible for a refund based on its jobber purchases of 1,235,579 gallons. In this case, Dees will receive \$10,000 (since it is the larger of

\$10,000 or 50 percent of the combined allocable share for the consigned and purchased gallonage. The total refund granted to Dees was \$18,421 principal plus \$4,498 interest).

*Vickers Energy Corporation/Nebraska, National Helium Corporation/Nebraska, Coline Gasoline Corporation/Nebraska, Standard Oil Company (Indiana)/Nebraska, 05/19/92, RQ1-578, RQ3-579, RQ2-580, RQ251-581*

The DOE issued a Decision and Order concerning the Second-Stage Applications for Refund filed by the State of Nebraska (Nebraska) requesting second-stage monies from the following consent order firms: Vickers Energy Corporation (Vickers), National Helium Corporation (NHC), Coline Gasoline Corporation (Coline), and Standard Oil Company (Indiana) (Amoco II). Nebraska requested these second-stage monies in order to continue funding a revolving loan program that finances energy conservation measures on farms and ranches. While the DOE has not previously approved a revolving loan

program to finance energy saving improvements on existing agricultural machinery and equipment, it has granted second-stage monies in separate decisions to revolving loan programs and agricultural energy conservation programs. Thus, Nebraska's proposal was approved. Accordingly, the State of Nebraska was granted \$176,470 in Vickers funds (\$72,695 principal and \$103,775 interest), \$77,245 in NHC funds (\$24,114 principal and \$53,131 interest), \$7,572 in Coline funds (\$2,059 principal and \$5,513 interest), and \$13,781 in Amoco II funds (\$10,007 principal and \$3,774 interest). The total refund granted to Nebraska was \$275,068 (\$108,875 and \$166,193 interest).

#### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Arkla Chemical Corporation.....	RF272-65429	05 <sup>22</sup> 92
Arkla Chemical Corporation.....	D272-65429	
Atlantic Richfield Company/Jerry's ARCO Service Center <i>et al.</i> .....	RF304-12414	05 <sup>19</sup> 92
Coleman Co., Inc., R.V. Products Division.....	RF272-67175	05 <sup>19</sup> 92
Enron Corp./Killeen Propane & Hardware.....	RF340-46	05 <sup>19</sup> 92
Navasota LP-Gas Co., Inc.....	RF340-59	
Exxon Corporation/Route 27 Exxon.....	RF307-10209	05 <sup>19</sup> 92
Farmers Union Cooperative Gas Co. <i>et al.</i> .....	RF272-55515	05 <sup>21</sup> 92
Gulf Oil Corporation/Duffy's Servicenter <i>et al.</i> .....	RF300-12588	05 <sup>19</sup> 92
Gulf Oil Corporation/Rainbow Oil Co., Inc. <i>et al.</i> .....	RR300-66	05 <sup>20</sup> 92
Gulf Oil Corporation/Stem Brothers, Inc.....	RR300-39	05 <sup>19</sup> 92
Peter Kiewit Sons' Co.....	RF272-10505	05 <sup>20</sup> 92
Peter Kiewit Sons' Co.....	RD272-10505	
Sam's Super Service.....	RF272-78280	05 <sup>22</sup> 92
Samson Management.....	RF272-14034	05 <sup>22</sup> 92
Samson Management.....	RD272-14034	
Texaco Inc./Andy's Texaco.....	RR321-8	05 <sup>19</sup> 92
Texaco Inc./Bedenbaugh's Texas.....	RF321-18629	05 <sup>22</sup> 92
Texaco Inc./Chet's Texaco Service <i>et al.</i> .....	RF321-103	05 <sup>21</sup> 92
Texaco Inc./Defense Logistics Agency.....	RF321-13932	05 <sup>22</sup> 92
Texaco Inc./Denis' Texaco Station <i>et al.</i> .....	RF321-7055	05 <sup>19</sup> 92
Texaco Inc./Jim Davis Service Station <i>et al.</i> .....	RF321-1608	05/22/92
Texaco Inc./Ram Aviation, Inc. <i>et al.</i> .....	RF321-7647	05 <sup>20</sup> 92
Texaco Inc./West Park Texaco.....	RF321-1495	05 <sup>19</sup> 92
Long's Texaco.....	RF321-2094	
Texaco Inc./Wilkes Texaco Service <i>et al.</i> .....	RF321-8710	05 <sup>19</sup> 92
Westvaco Corporation.....	RF272-67316	05 <sup>20</sup> 92
Westvaco Corporation.....	RF272-67316	

#### Dismissals

The following submissions were dismissed:

##### Name and Case No.

A & C Carriers Inc.; RF272-75934  
AFT Motor Freight, Inc.; RF272-75984  
Aggregate Trucking; RF272-75988  
Aller & Sharp, Inc.; RF272-75987  
Apcoa, Inc.; RF272-75927  
Arrow Industries, Inc.; RF272-75994

Baltimore Tank Lines, Inc.; RF272-75970  
Bel-Red Arco; RF304-6390  
Blue Ridge Trucking Co., Inc.; RF272-75991  
Bruffey Trucking, Inc.; RF272-75954  
California Tank Lines, Inc.; RF272-75932  
Charlottesville Public Schools; RF272-76133  
Cities Transit Inc.; RF272-75956  
City of Columbia—Equipment; RF272-76278  
Coastal Transport Co., Inc.; RF272-75928  
College Greens Texaco; RF321-16381

David W. Butts; RF304-10267  
Dominic Cristinzio, Inc.; RF272-89486  
East Lee Texaco; RF321-1596  
Eastern Motor Transport, Inc.; RF272-75946  
Elmer Borchardt, Inc.; RF272-75951  
Errol's Texaco; RF321-17174  
Eves Trucking Company; RF272-75977  
Fleet Transport Co., Inc.; RF272-75945  
Hatter Fuel Co.; RF304-11989  
Hobbs Trucking Company; RF272-75963

Inter-State Truck Lines, Inc.; RF272-75980  
 Johnson County, IL; RF272-85467  
 L & M Petroleum Dist., Inc.; RF304-11984  
 L.W. Purkenson Trucking Co.; RF272-75962  
 McConnell & Son, Inc.; RF272-75926  
 Pilot Freight Carriers, Inc.; RF272-75942  
 Randolph Trucking Company; RF272-75965  
 Reinauer Transportation Cos.; RF272-75931  
 Rodco Gulf Service Station; RF300-11805  
 Sea Pines Plantation Co., Inc.; RF272-8099  
 Southern Trucking, Inc.; RF272-75961  
 Town of East Greenwich, RI; RF272-82868  
 Truckmen-Service Corp.; RF272-75952  
 Tyson Truck Lines, Inc.; RF272-75940  
 Waco, Inc.; RF272-75955  
 Westside Texaco; RF321-1504  
 Yellow Cab Co.; RF272-75975

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 9, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-16807 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

#### Issuance of Decisions and Orders During the Week of June 8, Through June 12, 1992

During the week of June 8 through June 12, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

*James L. Schwab, 6/9/92, LFA-0212*

James L. Schwab filed an Appeal from a denial by the Freedom of Information Officer (FOI Officer), Department of Energy Field Office, Albuquerque (DOE/AL), of a request for a waiver of fees which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that: (i) Because a search for documents responsive to Schwab's FOIA requests has not been conducted and it has not yet been determined what information can be released to Schwab under the FOIA, the FOI Officer's denial of the fee waiver request was premature; and (ii) after the FOI Officer has had the

opportunity to review the releasable information to consider whether disclosure is likely to contribute significantly to public understanding of the operations or activities of government, she should issue a new determination on Schwab's fee waiver request. Accordingly, Schwab's request for a reversal of the FOI Officer's determination was denied and the matter was remanded to the FOI Officer for a new determination on the fee waiver request.

*James L. Schwab, 6/8/92, LFA-0213*

James L. Schwab filed an Appeal from an adverse determination issued by the Office of Intergovernmental and External Affairs of the Albuquerque Field Office (Albuquerque) of the Department of Energy (DOE) of a Request for a Fee Waiver in conjunction with a Request for Information submitted under the Freedom of Information Act and the Privacy Act. In considering the Appeal, the DOE determined that in his Appeal, Mr. Schwab had submitted information bearing on his ability to disseminate information to the public that had not been available to the person making the original fee waiver determination. The DOE found that Albuquerque should consider this information in the first instance. Accordingly, the Appeal was remanded to Albuquerque for a new determination contingent upon Mr. Schwab submitting the information to Albuquerque.

*Natural Resources Defense Council, 6/9/92, HFA-0290*

On May 28, 1985, the Natural Resource Defense Council (NRDC), filed an Appeal from a determination issued to it on May 8, 1985 by the Department of Energy's (DOE) Office of Military Application (OMA). In that determination, the OMA denied the NRDC's request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the OMA denied the NRDC's request for a copy of a document entitled "Abstracts of Weapon Data Reports," Volume 11, No. 8, pursuant to FOIA Exemptions 1 and 3. In considering the Appeal, the DOE found that the determination to withhold the requested document was consistent with current classification guidelines. Accordingly, the DOE denied the NRDC's Appeal.

#### Refund Applications

*Conoco Inc./Don's Conoco, 6/11/92, RF220-491*

The DOE issued a Decision and Order dismissing an application for refund from the Conoco Inc. consent order fund

filed by Don's Conoco. The DOE determined that Don's Conoco had filed its application almost five years after the deadline for Conoco applications, and almost one year after the Conoco consent order fund had been closed with a zero balance pursuant to the terms of the Petroleum Overcharge Distribution and Restitution Act of 1986. In addition, the DOE found that Don's Conoco had not submitted good cause for its extraordinary late filing. Accordingly, the DOE dismissed the refund application.

*Crown Central Petroleum Corporation/Independence Crown; Shelby Petroleum Corporation, National Heat and Power, Pyramid Supply, Inc., 6/11/92, RF313-322, RF313-327, RF313-329, RF313-330*

The DOE issued a Decision and Order dismissing the final four refund applications in the Crown Central Petroleum Corporation Subpart V special refund proceeding. The DOE determined that all four of the applicants had filed their applications months after the final deadline in the Crown Central proceeding. In addition, at the time these applications were filed, there were no pending Crown Central applications, and the remaining money had either been transferred or earmarked for transfer under the Petroleum Overcharge Distribution and Restitution Act of 1986. Consequently, the DOE determined that all these applications were filed too late for consideration in the Crown Central proceeding. Finally, the DOE found that none of the applicants presented good cause for accepting an application so late in the refund process. The DOE also announced that it would no longer accept any applications in the Crown Central proceeding. Accordingly, the DOE dismissed the refund applications.

*Crown Central Petroleum Corporation/Shenandoah Oil Co.; Shenandoah Oil Co.; Shell Oil Company/Shenandoah Oil Co.; Shenandoah Oil Co., 6/8/92, RF313-331, RF313-332, RF315-6505, RF313-10211*

The DOE issued a Decision and Order concerning the Applications for refund filed by Shenandoah Oil Co., a petroleum jobber, in the Crown Central Petroleum Corporation special refund proceeding. The DOE found that Shenandoah Petroleum Co. was eligible for a refund of \$1,121 from the Crown Central Petroleum Corporation consent order fund based on the firm's purchases of heating oil and gasoline during the consent order period. The DOE also discovered, however, that these applications had erroneously been

docketed as having been filed in the Shell Oil Company special refund proceeding, and that one of these applications had been inadvertently granted a refund of \$109. Accordingly, the DOE granted the two Crown Central refund applications but reduced the amount granted in one of the applications by the \$109 mistakenly granted in the Shell Oil proceeding. The DOE also revoked the erroneous Shell Oil refund grant, and dismissed the other Shell Oil application. Finally, the DOE instructed the DOE Controller to transfer \$109 from the Crown Central consent order refund to the Shell Oil consent order fund to reimburse the latter for the prior erroneous refund.

*Frederick S. Wyle, 6/10/92, RF272-27769, RD272-27769*

The DOE issued a Decision and Order granting an Application for Refund filed in the subpart V crude oil refund proceeding by Frederick S. Wyle, as Trustee in Bankruptcy of Pacific Far East Line, Inc. (PFEL), an ocean carrier which was engaged in United States foreign and domestic commerce before ceasing operations in 1978. Rejecting arguments raised by a group of state governments the DOE concluded that the regulatory mechanisms of neither the Federal Maritime Commission nor the Interstate Commerce Commission operated so as to allow the Applicant automatically to pass through increased bunker fuel costs to its customers. Therefore, the DOE found that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Based upon PFEL's purchases of 152,307,616 gallons of petroleum products, the DOE granted a refund of \$121,846. The DOE also denied a Motion for Discovery filed by the

States for reasons discussed in previous Decisions.

*Seneca Petroleum Company, Inc., 6/10/92, RF272-25544, RD272-25544*

The DOE issued a Decision and Order granting an Application for Refund filed by Seneca Petroleum Company, Inc. (Seneca), a producer of specification asphalt and asphaltic concrete, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. With respect to Seneca's purchases of asphalt which was later resold as liquid asphalt to outside companies, the DOE found that the applicant could not rely on the end-user presumption, and had not provided evidence that it suffered a competitive disadvantage as a result of the purchases. Therefore, those purchases were found to be not eligible for a refund in this proceeding. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was \$20,532.

*Texaco Inc./LaRose Texaco Service, 6/10/92, RR321-7*

Irene LaRose, the owner of LaRose Texaco Service, filed a Motion for

Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that she had filed. In the Motion, Ms. LaRose stated that she had signed the second application, and certified in it that no other application had been filed, because she believed that this was necessary to supplement her refund claim. In considering the Motion, the DOE rejected the argument by Ms. LaRose's representative that the denial deprived Ms. LaRose of her property in violation of the 5th Amendment to the U.S. Constitution. However, the DOE granted the Motion, finding that Ms. LaRose erroneously filed the second application because she was confused by Texaco's sending her another application form. Accordingly, Ms. LaRose was granted a refund of \$4,526.

*Texaco Inc./Robert E. Way, 6/8/92, RF321-18375*

The DOE issued an Order granting a refund to Robert E. Way. Specifically, the DOE determined that Mr. Way provided sufficient documentation to support his claim. Moreover, the DOE determined that a December 19, 1991 settlement agreement between Robert E. Way and Way Oil Company concerning Mr. Way's eligibility for a refund was equitable and in accord with DOE precedents. Accordingly, Robert E. Way was granted a refund of \$13,018 (\$9,923 principal plus \$3,095 interest).

#### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Conference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Burge's Corner et al	RF304-3783	06/12/92
Atlantic Richfield Company/Cape Ann Marina, Inc. et al	RF304-12900	06/09/92
Atlantic Richfield Company/Consolidated Freightways Corp. of Delaware	RF304-3311	06/08/92
Atlantic Richfield Company/Gerlach's Arco et al	RF304-12876	06/08/92
Atlantic Richfield Company/Southern States Cooperative, Inc	RF304-9029	06/11/92
Champion Enterprises, Inc.	RF272-40800	06/08/92
Champion Enterprises, Inc.	RD272-40800	
Exxon Corporation/Country Club Exxon, Inc.	RF307-10214	06/10/92
Gulf Oil Corporation/East Innes Gulf et al	RF300-14362	06/10/92
Gulf Oil Corporation/Meaders & Tatum, Inc	RF300-11775	06/10/92
Meaders & Tatum, Inc.	RF300-20019	
Gulf Oil Corporation/New Castle Gulf Station	RF300-13371	06/12/92
Gulf Oil Corporation/Ogburn Station Gulf	RF300-14210	06/10/92
Morrison's Gulf	RF300-14552	
Morrison's Gulf	RF300-16361	
Gulf Oil Corporation/Pigeon Cooperative Oil Co	RR300-157	06/12/92
Kenyon-Nerstrand Coop Oil Assoc	RF272-63814	06/11/92
Swiss Valley Farms Co	RF272-78230	
Swiss Valley Farms Co	RF272-78231	
Fredericksburg Farmers Coop	RF272-78233	
Nevada City School District et al	RF272-80079	06/12/92
Padre Drilling Co., Inc.	RF272-14020	06/08/92
Padre Drilling Co., Inc.	RD272-14020	

Quantum Chemical Corporation/Maxey Grossenbacher	RF330-18	06/10/92
Quantum Chemical Corporation/Moyle Petroleum Co	RF330-65	06/12/92
North Georgia Petroleum Co	RF330-66	
Texaco Inc./Alice Aviation, Inc. et al	RF 321-6641	06/08/92
Texaco Inc./B&M Super Service	RF321-9922	06/08/92
Davis Texaco	RF321-18649	
Texaco Inc./Dunbar Texaco Service et al	RF321-998	06/08/92
Texaco Inc./Enron Gas Pipeline Operating Co	RF321-10746	06/11/92
Burt Madden Oil Co	RF321-10758	
Enron Corp	RF321-14558	
Texaco Inc./Frank's Texaco et al	RF321-1621	06/10/92
Texaco Inc./H.G. Hamilton Oil Co, Inc. et al	RF321-14257	06/10/92
Texaco Inc./Herron Texaco	RF321-18688	06/12/92
Texaco Inc./John DePalma et al	RF321-7008	06/12/92
Texaco Inc./Ninotti's Texaco	RF321-18687	06/12/92
Texaco Inc./Randolph's Texaco et al	RF321-1781	06/10/92
Texaco Inc./Rulon Texaco Service et al	RF321-1887	06/08/92
Texaco Inc./Stephenson Texaco Station et al	RF321-9955	06/09/92
Texaco Inc./University Texaco	RF321-18690	06/12/92

### Dismissals

The following submissions were dismissed:

Name	Case No.
Allen E. Dillon	RF304-13009
Beaver Texaco	RF321-9737
Berthoud's Texaco	RF321-7990
Canterberry's Texaco	RF321-5775
Charles Grant Broderick Service Station	RF304-12311
Corey Oil Co	RF300-19998
Darrel J. Westley	RF304-13001
Deeb Batson	RF304-12988
Dick's Texaco	RF321-9705
Dobbs Houses, Inc.	RF300-19896
Earnest C. Anderson Gravel & Ready Mix, Inc.	RF300-18673
Freeway Texaco	RF321-18689
Fuel Services, Inc.	LEE-0028
H. Spadoni	RF304-12994
James L. Schwab	LFA-0210
Jim Thomas Enterprises	RF321-4762
Leevac Petroleum Corp.	RF300-19786
Liquid Petroleum Corp.	RF321-11640
Lowell Packing Company	RF300-19712
Lynn Kjorstad	RF312-15415
McCutcheon's Arco	RF304-3860
Oak Shell	RF315-961
Panchak's Service	RF304-3998
Papin Trucking	RF272-65887
Ralston Purina Company	RF300-19788
Reda's Service Station, Inc.	RF300-19713
Sid & Les's Texaco	RF321-13347
Smith Tank Lines	LEE-0020
Smyth Auto Service	RF304-4213
Smyth Auto Service	RF304-4212
The Dalles School District #12	RF304-5207
Win's Gulf Service	RF300-19833

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 9, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-16808 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

### Proposed Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of Proposed Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of \$1,786,697, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under the terms of a settlement agreement entered into with the Texas International Company and the Texas International Petroleum Corporation, Case No. LEF-0045. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESSES:** Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. All comments should display a reference to case number LEF-0045.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from the Texas International Company and the Texas International Petroleum Corporation. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be used on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of

this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 8, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

**Proposed Decision and Order of the Department of Energy**

**Implementation of Special Refund Procedures**

Name of Firm: Texas International Co., Texas International Petroleum Corp.

Date of Filing: May 5, 1992.

Case Number: LEF-0045

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR § 205.81. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

**I. Background**

On September 14, 1984 the DOE entered into a consent order with Texas International Co. (TIC) and its wholly owned subsidiary, Texas International Petroleum Corp. (TIPCO) (hereinafter referred to collectively as the consent order firms). During the period September 1, 1973 through December 31, 1975, TIPCO was engaged in the production and sale of crude oil. The DOE audited the companies' compliance during this period with the Mandatory Petroleum Pricing and Allocation Regulations (the regulations) and issued a Proposed Remedial Order (PRO) to the consent order firms requiring refunds for alleged crude oil overcharges. Thereafter, the firms entered into a consent order which resolved the issues raised by the PRO.

On May 5, 1992, the ERA filed a Petition for the Implementation of Special Refund Procedures for alleged crude oil overcharges obtained from the consent order firms. In the present case, the consent order firms have remitted a total of \$1,786,696.83 to the DOE in accordance with Consent Order 640C00181. An additional \$796,452.82 in interest has accrued on that amount as of April 30, 1992. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR, Part 205, Subpart V. The Subpart V process may be used in situation where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, See Office of Enforcement, 9 DOE

§ 82,508 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from TIPCO and TIC, and have determined that such procedures are appropriate in the present case.

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 853 F. Supp. 108 (D. Kan. 1986), 6 Fed. Energy Guidelines § 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of all crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). This order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1988) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See *City of Columbus, Georgia*, 16 DOE § 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in April 10 Notice in numerous cases. See, e.g., *Shell Oil Co.*, 17 DOE § 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE § 85,475 (1986) (*Mountain Fuel*).

**II. Refund Claims**

We will adopt the DOE's standard procedures to distribute the consent order

funds. We have chosen to initially reserve twenty of these funds, plus accrued interest, for direct refunds to claimant in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel*, 14 DOE at 88,868. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPA), 15 U.S.C. §§ 751-760h (1982). In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell*, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines § 90,507 (1985). See also *Petroleum Overcharge Distribution and Restitution Act* § 3003(b)(2), 15 U.S.C. § 4502(b)(2).

If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. See *Mid-America Dairyman v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989), 3 Fed. Energy Guidelines § 26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1287 (D. Kan. 1983), 3 Fed. Energy Guidelines § 26,613 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination (\$2,583,149.65) by the total consumption of petroleum products in the United States during the period of price controls. (2,020,997,335.000 gallons). *Mountain Fuel*, 14 DOE at 88,868, n.4. This yields a volumetric refund amount of \$0.000001278155891284 per gallon.

As has been stated in prior decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *A. Tarricone, Inc.*, 15 DOE § 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The deadline for filing an Application for

Refund from the current (fifth) pool of funds is June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of \$.0008 per gallon. While we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

### III. Payments to the Federal Government and the States

Under the term of the MSRP, the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90.509 at 90.687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the state under the Stripper Well Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within thirty days of its publication in the Federal Register.

#### It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Texas International Company and by Texas International Petroleum Corporation pursuant to the Consent Order entered into on July 3, 1984, will be distributed in accordance with the foregoing decision.

[FR Doc. 92-16806 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-4155-1]

#### Open Meeting of the Federal Facilities Environmental Restoration Dialog Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** FACA Committee Meeting—Federal Facilities Environmental Restoration Dialog Committee.

**SUMMARY:** As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialog Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process.

**DATES:** The meeting will be held on July 29, 1992, from 1 until 5 p.m. and on July 30, 1992, from 8:30 until 4 p.m.

**ADDRESSEES:** The meeting will be held at Sheraton City Centre, 1143 New Hampshire Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialog Committee should contact Nicholas Morgan, Office of Federal Facilities Enforcement, U.S. EPA (OE-2261), 401 M Street, SW., 20460, (202) 260-1270.

Dated: July 10, 1992.

Nicholas Morgan,

*Designated Federal Official.*

[FR Doc. 92-16902 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4154-7]

#### Public Comment on National Environmental Education Report to Congress

**SUMMARY:** Under the leadership of the U.S. Environmental Protection Agency (EPA), the National Environmental Education Act of 1990 (Pub. L. 101-619) provides for the Federal government to promote and support the nation's environmental education efforts. Section 9 of the Act requires EPA to establish a National Environmental Education Advisory Council to advise the Administrator on how EPA implements the Act. This Council is comprised of expert environmental educators who represent schools and universities, states, non-profit organizations, the private sector, and senior Americans.

Section 9 also requires the Council to produce a bi-annual report to Congress assessing the state of environmental education nationally and offering recommendations for improvement. The first national report is due to Congress on November 16, 1992. In accordance with the Act, EPA is making available the first draft of the Council's report for public review and comment.

**OBTAINING FURTHER INFORMATION OR COPIES OF REPORT:** To obtain further information or a copy of the draft report for review and comment, please contact Kathleen MacKinnon by phone in EPA's Office of Environmental Education at 202-260-4951.

**DEADLINE FOR SUBMITTING COMMENTS:** Public comments must be submitted in writing and must be received no later

than August 14, 1992. Comments must be directed to Kathleen MacKinnon, U.S. EPA, Office of Environmental Education (A-107/Northeast Basement-014), 401 M Street, SW., Washington, DC, 20460.

**SUPPLEMENTARY INFORMATION:** The report will assess the state of environmental education nationally and will offer recommendations for improvement. The report will include (1) background on the origin and need for the report and on its intended uses, (2) an assessment of the current status of environmental education in the U.S. and examples of ongoing programs and trends in government, schools, non-governmental organizations, and business and industry, (3) a discussion of obstacles to improving environmental education that include philosophical and conceptual problems, as well as implementation and attitudinal problems, and (4) recommendations to improve environmental education.

Dated: July 8, 1992.

Approved by:

Chris Rice,

*Special Assistant.*

[FR Doc. 92-16793 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-34031; FRL 4071-5]

#### Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305-5761

**SUPPLEMENTARY INFORMATION:****I. Introduction**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the

Federal Register. Thereafter, the Administrator may approve such a request.

**II. Intent to Delete Uses**

This notice announces receipt by the Agency of applications from registrants to delete uses in the 19 pesticide registrations listed in the following Table 1. These registrations are listed by

registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before October 14, 1992 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — Registrations With Requests for Amendments to Delete Uses in Certain Pesticide Registrations

Registration No.	Product Name	Delete From Label
000016-00131	Dragon Benomyl Wettable	Roses, flowers, ornamentals, shade trees, drench treatment, preplant dip treatment, bulbs
000100-00437	Princep 80W	Asparagus, artichokes, sugarcane, noncropland use (industrial sites, highway medians & shoulders, railroad rights-of-way, lumberyards, petroleum tank farms, around farm building, around farm equipment and fuel storage areas, along fences, roadsides, and lanes)
000100-00526	Princep 4L	Asparagus, artichokes, sugarcane, noncropland use (industrial sites, highway medians and shoulders, railroad rights-of-way, lumberyards, petroleum tank farms, around farm buildings, around farm equipment and fuel storage areas, along fences, roadsides, and lanes)
000100-00603	Princep Caliber 90	Asparagus, artichokes, sugarcane, noncropland use (industrial sites, highway medians & shoulders, railroad rights-of-way, lumberyards, petroleum tank farms, around farm building, around farm equipment and fuel storage areas, along fences, roadsides and lanes)
000239-02562	Ortho Formula 101 Insect Spray	Cabbage, peas, prunes, blackberries
000279-02821	Dimethoate 267	Aerial application for control of cabbageworms and cabbage loopers, the rates of Dimethoate 267 given for beans, broccoli, cauliflower, cabbage, collards, endive (escarole), kale, leaf lettuce, mustard greens, spinach, swiss chard, turnips, head lettuce, melons, peas, peppers, potatoes, tomatoes & watermelons can be used in combination with endosulfan, malathion or parathion IAW manufacturer's direction.
003125-00320	Bayleton 50% Wettable Powder	Almonds
004787-00004	Cheminova Methyl Parathion Technical	Almonds, apples, apricots, beets, cherries, citrus, clover, cucumbers, eggplants, garlic (SLN), gooseberries, grapes, hops, kohlrabi, melons, nectarines, peaches, peanuts, pears, pecans, peppers, plums, prunes, pumpkins, rutabagas, safflower, squash, strawberries, sweet potatoes, tomatoes, forest, forest & christmas tree plantings
006922-00024	Perkacit Thiram-99	All turf uses
008340-00020	Hoelon 3EC Herbicide	Acreage conservation reserve
010163-00073	Gowan Methyl Parathion 7.5	Apples, apricots, artichokes, cherries, cucumbers, forest, gooseberries, grapes, hops, peanuts, pears, peppers, pine forests, plums, prunes, safflower, tobacco, tomatoes
010163-00118	Gowan Methyl Parathion 5EC	Tomatoes
010163-00121	Methyl Parathion 4EC	Artichokes, apples, apricots, gooseberries, hops, peaches, pears, peppers, plums, prunes, safflower, strawberries, tobacco, pine forests
019713-00256	Drexel 7-1/2 Lb. Methyl Parathion	Peaches, plums, prunes
033955-00408	Acme Fruit Tree Spray	Apples, apricots, peaches, plums
034704-00497	Methyl Parathion 25WP	Peppers, tomatoes
043813-00002	Fungaflor Technical	Formulation of seed treatment for cotton
043813-00003	Fecundal 10EC	Cotton
064744-00001	Funguran-OH	Wheat, barley

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000016	Dragon Corp., Box 7311, Roanoke, VA 24019.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	Chevron Chemical Co., Registration & Regulatory Affairs Dept., 940 Hensley Street, Richmond, CA 94804.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
003125	Miles Inc., Agriculture Division, Box 4913, Kansas City, KS 64120.
004787	Cheminova Holding A/S, Oak Hill Park, 1700 Route 23, Suite 210, Wayne, NJ 07470.
006922	AKZO Chemie America, 300 S. Riverside Plaza, Chicago, IL 60606.
008340	Hoechst Celanese Corp., c/o V A Door, Rt 202-206, Box 2500, Somerville, NJ 08876.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
019713	Drexel Chemical Co., Box 9306, Memphis, TN 38109.
033955	PBI Gordon Corp., Box 4090, Kansas City, MO 64101.
034704	Platte Chemical Co., Inc., c/o William M. Mahlborg, Box 667, Greeley, CO 80632.
043813	Janssen Pharmaceutica Inc., Plant Protection Division, 1125 Trenton-Harbourton Rd., Titusville, NJ 08560.
064744	Urania Agrochem GMBH, c/o K.J. O'Connors, 4660 Kenmore Ave., Suite 1018, Alexandria, VA 22304.

### III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute products with the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: July 6, 1992.

**Douglas D. Camp,**

*Director, Office of Pesticide Programs.*

[FR Doc. 92-16797 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180873; FRL-4069-2]

### Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 16 States as listed below. A crisis exemption was initiated by the Colorado Department of Agriculture and the Florida Department of Agriculture and Consumer Services. A quarantine exemption was also granted to the United States Department of Agriculture. These exemptions, issued during the months of February and March of 1992, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Alabama and Missouri Departments of Agriculture. Information on these

restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific, crisis, and quarantine exemption for its effective date.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-5806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of hydrogen cyanamide on peaches as a growth regulator to promote uniform budbreak under conditions of inadequate winter chilling; February 5, 1992, to March 1, 1992. (Andrea Beard)

2. Alabama Department of Agriculture and Industries for the use of clomazone on sweet potatoes to control annual broadleaf weeds; March 26, 1992, to July 15, 1992. (Libby Pemberton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of Pro-Gro (30% carboxin/50% thiram) on onion seed to control onion smut; March 23, 1992, to May 31, 1992. California had initiated a crisis exemption for this use. (Susan Stanton)

4. California Environmental Protection Agency for the use of avermectin B<sub>1</sub> on strawberries to control two-spotted

spider mites; March 21, 1992, to May 20, 1993. (Larry Fried)

5. California Environmental Protection Agency for the use of bifenthrin on cucurbits to control the sweet potato whitefly, blackbean aphid, and cotton aphid; March 12, 1992, to March 12, 1993. (Andrea Beard)

6. California Department of Food and Agriculture for the use of avermectin B<sub>1</sub> on celery to control serpentine leafminers; February 10, 1992, to November 19, 1992. (Libby Pemberton)

7. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of triadimefon on artichokes to control powdery mildew; February 28, 1992, to December 31, 1992. (Susan Stanton)

8. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of methyl bromide on sweet potatoes to control nematodes; February 26, 1992, to February 25, 1993. (Libby Pemberton)

9. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of fosetyl-aluminum (Aliette) on spinach to control downy mildew; February 29, 1992, to February 28, 1993. (Susan Stanton)

10. Florida Department of Agriculture and Consumer Services for the use of iprodione on tobacco to control target spot disease; March 30, 1992, to June 1, 1993. (Susan Stanton)

11. Georgia Department of Agriculture for the use of iprodione on tobacco to control target spot disease; March 10, 1992, to May 1, 1992. (Susan Stanton)

12. Idaho Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control downy mildew;

March 19, 1992, to September 1, 1992. (Susan Stanton)

13. Idaho Department of Agriculture for the use of sethoxydim on mint to control green foxtail and quackgrass; March 26, 1992, to September 1, 1992. (Susan Stanton)

14. Idaho Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 9, 1992, to November 30, 1992. (Susan Stanton)

15. Idaho Department of Agriculture for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to May 30, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

16. Louisiana Department of Agriculture and Forestry for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to May 30, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

17. Louisiana Department of Agriculture and Forestry for the use of pendimethalin on sugarcane to control itchgrass and brown top panicum; March 9, 1992, to June 30, 1992. (Larry Fried)

18. Michigan Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fire blight; March 23, 1992, to July 1, 1992. (Susan Stanton)

19. Minnesota Department of Agriculture for the use of Pro-Gro (50% thiram/30% carboxin) on onion seed to control onion smut; February 20, 1992, to May 31, 1992. (Susan Stanton)

20. Minnesota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; February 13, 1992, to July 31, 1992. (Susan Stanton)

21. Mississippi Department of Agriculture and Commerce for the use of clomazone on sweet potatoes to control annual broadleaf weeds; March 26, 1992, to July 15, 1992. (Libby Pemberton)

22. Mississippi Department of Agriculture and Commerce for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to May 30, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

23. Montana Department of Agriculture for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20,

1992, to December 31, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

24. Montana Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, wild oats, and volunteer barley and wheat; March 26, 1992, to November 1, 1992. (Susan Stanton)

25. Montana Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 30, 1992, to November 1, 1992. (Susan Stanton)

26. New York State Department of Environmental Conservation for the use of cyromazine on onions to control onion maggots; March 5, 1992, to May 15, 1992. (Susan Stanton)

27. North Carolina Department of Agriculture for the use of clomazone on sweet potatoes to control annual broadleaf weeds; March 26, 1992, to July 15, 1992. (Libby Pemberton)

28. North Carolina Department of Agriculture for the use of napropamide on sweet potato propagation beds to control annual broadleaf weeds; March 10, 1992, to April 30, 1992. (Libby Pemberton)

29. North Carolina Department of Agriculture for the use of iprodione on greenhouse-grown tobacco transplants to control target spot and collar rot; March 5, 1992, to June 1, 1992. (Susan Stanton)

30. Oregon Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, and wild oats; March 26, 1992, to July 15, 1992. (Susan Stanton)

31. Oregon Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 9, 1992, to November 15, 1992. (Susan Stanton)

32. Oregon Department of Agriculture for the use of cyfluthrin on pears to control pear psylla; February 26, 1992, to April 30, 1992. (Andrea Beard)

33. Oregon Department of Agriculture for the use of chlorothalonil on hazelnuts to control eastern filbert blight; February 11, 1992, to May 30, 1992. (Susan Stanton)

34. Oregon Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control downy mildew; March 19, 1992, to September 15, 1992. (Susan Stanton)

35. Oregon Department of Agriculture for the use of oxyfluorfen on blackberries to control primocanes; March 19, 1992, to July 31, 1992. (Larry Fried)

36. Oregon Department of Agriculture for the use of oxyfluorfen on raspberries

to control primocanes; March 19, 1992, to May 15, 1992. (Larry Fried)

37. Texas Department of Agriculture for the use of cyfluthrin on sugarcane to control Mexican rice borer; March 5, 1992, to March 4, 1993. (Libby Pemberton)

38. Texas Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrip and western flower thrips; February 26, 1992, to February 26, 1993. (Andrea Beard)

39. Washington Department of Agriculture for the use of oxyfluorfen on raspberries to control primocanes; March 19, 1992, to June 1, 1992. (Larry Fried)

40. Washington Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, and Bermudagrass; March 26, 1992, to July 15, 1992. (Susan Stanton)

41. Washington Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fire blight; March 23, 1992, to August 1, 1992. (Susan Stanton)

42. Washington Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 9, 1992, to November 30, 1992. (Susan Stanton)

43. Washington Department of Agriculture for the use of cyfluthrin on pears and apple/pear inter-plants to control pear psylla; February 26, 1992, to April 30, 1992. (Andrea Beard)

44. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of clomazone on cabbage to control velvetleaf; March 26, 1992, to December 31, 1992. (Libby Pemberton)

45. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on mint to control foxtail, crabgrass, barnyardgrass, and quackgrass; February 11, 1992, to July 15, 1992. (Susan Stanton)

Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on March 18, 1992, for the use of chlorothalonil on mushrooms to control verticillium diseases. The need for this program is expected to last until March 17, 1993. (Susan Stanton)

2. Florida Department of Agriculture and Consumer Services on February 14, 1992, for the use of fosetyl-aluminum (Aliette) on lettuce to control downy mildew. This program has ended. (Susan Stanton)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of

ethylene oxide on imported bird seed shipments to eradicate and prevent the spread of certain plant pests new to, or not known to be widely distributed within and throughout, the United States and its territories at various ports of entry; February 26, 1992, to February 26, 1995. (Andrea Beard)

EPA has denied specific exemption requests from the Alabama and Missouri Departments of Agriculture for the use of clomazone on cotton to control velvetleaf. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: June 19, 1992.

Douglas D. Camp, Jr.  
Director, Office of Pesticide Programs.

[FR Doc. 92-16799 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34030; FRL 4069-6]

# Notice of Receipt of Request for Amendment to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection  
Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA),

as amended, EPA is issuing a notice of receipt of request for amendment by McLaughlin Gormley King Company to delete uses for the active ingredients *N*-Octyl bicycloheptene dicarboximide, *d*-trans allethrin and Esbiol.

DATES: Unless the request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 14, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

## SUPPLEMENTARY INFORMATION:

### I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

## II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from McLaughlin Gormley King Company (MGK) to amend the terms of registration for 5 manufacturing use products. These products contain the active ingredients *N*-Octyl bicycloheptene dicarboximide (MGK-264), *d*-trans Allethrin, and Esbiol. The amendments would limit the use of these products to the manufacture of end use pesticide products not labeled for the uses listed in Table 1 below. Although the listed uses do not appear explicitly on the current unamended MGK manufacturing use product labels, all are currently approved for end use products containing the ingredients in question.

Formulators or users of end use products containing these ingredients who desire continued use on crops or sites listed in Table 1 should contact the registrant before October 14, 1992 to discuss withdrawal of the applications for amendment. Interested members of the general public may also intercede with the registrant prior to Agency approval of the amendments. The registrant's name and address are: McLaughlin Gormley King Company, 8810 10th Avenue North, Minneapolis, MN 55427.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENT TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Delete Use On
001021-00088	MGK 264 Insecticide Synergist	Cranberries, grapes, citrus fruits, oranges, nut crops, almonds, filbert, walnuts, figs, guava, mangos, pineapples, cocoa (beverage crop), melons, cantaloupes, honeydew and/or honey ball melons, muskmelons, watermelons, cucumbers, pumpkins, squash, eggplant, pepper (fruiting vegetable), tomatoes, broccoli, brussel sprouts, cabbage, cauliflower, collards, kale, endive, artichoke (globe), lettuce, mustard (leafy vegetable), parsley, spinach, carrot (root crop vegetable), garlic, onion (dry), potatoes, radishes, sweet potatoes, asparagus, barley, mushrooms, onions (green), grain crops, barley, oats, rye, sorghum, beans, beets, celery, corn, peanuts, peas, turnips, soybeans, vegetables (all or unspecified), fruits (all or unspecified), pastures, fruit trees, forest trees, forest lands, dairy animals, dairy cattle, farm animals, cattle, goats, sheep, beef cattle (meat animals), swine (meat animals), poultry (chickens), greenhouse environs and equipment (empty), mushroom house environs and equipment (empty), barns (use unspecified), greenhouses (in use), aquatic areas, swimming pool water systems, drainage systems, sewage systems, lakes, ponds impounded water, swamps, marshes, bogs, and standing water (permanent), intermittently flooded areas
001021-01060	D-trans Allethrin 90% Concentrate	Cranberries, grapes, strawberries, citrus fruits, crabapples, quince, figs, broccoli, cabbage, cauliflower, collards, kale, dandelion, lettuce, spinach, turnips, mushrooms, grain crops, mustard, peas, sunflowers, fruit trees, farm animals, greenhouses (in use)
001021-01217	D-trans Allethrin (Technical Grade)	Cranberries, grapes, strawberries, citrus fruits, crabapples, quince, figs, broccoli, cabbage, cauliflower, collards, kale, dandelion, lettuce, spinach, turnips, mushrooms, grain crops, mustard, peas, sunflowers, fruit trees, farm animals, greenhouses (in use)
001021-01242	Esbiol 90% Concentrate (F-1967)	Cranberries, citrus fruits, farm animals, green houses (in use), poultry
001021-01291	Esbiol Technical	Cranberries, citrus fruits, farm animals, green houses (in use), poultry

**III. Existing Stocks Provisions**

The Agency has authorized registrant to sell or distribute products with the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: July 6, 1992.

Douglas D. Camp, Jr.  
Director, Office of Pesticide Programs.

[FR Doc. 92-16798 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

[FEMA-948-DR]

**South Dakota; Notice of Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**EFFECTIVE DATE:** July 2, 1992.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA-948-DR), dated July 2, 1992, and related determinations.

**FOR FURTHER INFORMATION CONTACT:**

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 2, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes, and flooding on June 13-23, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a),

Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Roger E. Free of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Brookings, Buffalo, Deuel, Hamlin, and Harding Counties for Public Assistance. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,  
Director.

[FR Doc. 92-16680 Filed 7-15-92; 8:45 am]

BILLING CODE 6718-02-M

**FEDERAL RESERVE SYSTEM****Al E. Birdwell, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 5, 1992.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Al E. Birdwell*, Houston, Texas; to acquire an additional 0.48 percent, for a total of 10.29 percent, of the voting shares of Tomball National Bancshares, Inc., Tomball, Texas, and thereby indirectly acquire Tomball National Bank, Tomball, Texas.

2. *Puckett Willis and Rose Parker Willis*, Winnfield, Louisiana; to acquire an additional 6.835 percent, for a total of

26.92 percent, of the voting shares of Winn Bancshares, Inc., Winnfield, Louisiana, and thereby indirectly acquire Winn State Bank and Trust, Winnfield, Louisiana.

Board of Governors of the Federal Reserve System, July 10, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 92-16726 Filed 7-15-92; 8:45 am]

BILLING CODE 6210-01-F

**First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 10, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (11) of the Board's Regulation Y.

2. *Wachovia Corporation*, Winston-Salem, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 10, 1992.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 92-16725 Filed 7-15-92; 8:45 am]  
BILLING CODE 6210-01-F

#### **Jefferson Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1992.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jefferson Bancorp, Inc.*, Miami Beach, Florida; to engage *de novo* through its subsidiary, Jefferson Capital Corporation, Miami Beach, Florida, in servicing loans and making or acquiring loans for its own account or for the account of others, and other extensions of credit (including issuing letters of credit) such as will be made by a mortgage, finance or factoring company and other extensions of credit for any person, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 10, 1992.

Jennifer J. Johnson,  
Associate Secretary of the Board.  
[FR Doc. 92-16727 Filed 7-15-92; 8:45 am]  
BILLING CODE 6210-01-F

#### **Killbuck Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §

225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 10, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Killbuck Bancshares, Inc.*, Killbuck, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Killbuck Savings Bank Company, Killbuck, Ohio.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstbank of Illinois Co.*, Springfield, Illinois; to acquire 100 percent of the voting shares of First Highland Corp., Highland, Illinois, and thereby indirectly acquire The First National Bank of Highland, Highland, Illinois.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *CS Bancshares, Inc.*, Chillicothe, Missouri; to acquire 94.5 percent of the voting shares of Ray County Bank, Richmond, Missouri. Comments on this application must be received by August 5, 1992.

2. *P.N.B. Financial Corporation*, Kingfisher, Oklahoma; to acquire 100 percent of the voting shares of Helena Bancshares, Inc., Helena, Oklahoma, and thereby acquire control of Helena National Bank, Helena, Oklahoma.

Board of Governors of the Federal Reserve System, July 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-16728 Filed 7-15-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Agency Information Collection Under OMB Review

**AGENCY:** Administration for Children and Families, Administration for Children, Youth and Families National Center on Child Abuse and Neglect, HHS.

#### Notice

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing information collection entitled "Instructions for the Application for Child Abuse and Neglect Prevention Grants Program ("Challenge Grants"). This request for OMB clearance is made by the National Center on Child Abuse and Neglect of the Administration for Children, Youth and Families (ACYF) within the Administration for Children and Families (ACF).

**ADDRESSES:** Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

#### Information on Document

**Title:** ACF Program Instructions: Application for Child Abuse and Neglect Prevention Grant Funds "Challenge Grants".

**OMB No.:** 0980-XXXX.

**Description:** On October 12, 1984, Congress enacted Public Law 98-473, the continuing appropriation bill for FY 1985. Section 402 through 409 of that bill authorized the Secretary to make grants ("Challenge grants") to eligible States to encourage the establishment and maintenance of State trust funds, or other funding mechanisms, including appropriations, which are available only for child abuse and neglect prevention

activities. The Child Abuse Prevention Challenge Grants Reauthorization Act of 1988, Public Law 101-126, reauthorized and transferred this program as a new Title II of the Child Abuse Prevention and Treatment Act (CAPTA), Public Law 100-294. Legislation to reauthorize and amend CAPTA was signed into law on May 28, 1982 (Public Law 102-295).

FY 1992 funds are available to those States that in FY 1991 had set up trust funds or other funding mechanisms or appropriations only for child abuse and prevention activities.

*Annual Number of Respondents*.....57

*Annual Frequency*.....1

*Average Burden Hours Per Response*.....32

*Total Burden Hours*.....1,824

Dated: June 29, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-1665 Filed 7-15-92; 8:45 am]

BILLING CODE 4130-01-M

#### Agency Information Collection Under OMB Review

**AGENCY:** Administration for Children and Families, Office of Policy and Evaluation.

#### ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for continued use of an existing information collection for the Office of Policy and Evaluation of the Administration for Children and Families (ACF).

**ADDRESSES:** Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

#### Information on Document

**Title:** Standard Setting Requirements for Medical and Non-Medical Facilities Where SSI Recipients Reside

**OMB No.:** 0980-0141.

**Description:** Section 1616(e) of the Social Security Act, the Keys Amendment, and Sections 45 CFR 1397.10 and 1397.20 contain information collection requirements which specify

that States and other eligible jurisdictions must:

(a) Maintain records of standards and enforcement procedures for residential facilities where SSI recipients reside and of waivers and violations of such standards;

(b) Make available for public review a summary of the standards for each type of facility;

(c) Make available to any interested individual a copy of a complete set of standards for each type of facility, the enforcement procedures, and waivers and violations;

(d) Inform the Social Security Administration of the facilities in violation of the standards; and

(e) Certify compliance with all requirements to the Secretary.

*Annual Number of Respondents*..... 52.

*Annual Frequency*..... 2.

*Average Burden Hours Per Response*..... 4.

*Total Burden Hours*..... 416.

Dated: May 25, 1992.

Naomi B. Marr,

Director, Office of Information, Systems Management.

[FR Doc. 92-16660 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-01-M

### Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)

#### Comprehensive Residential Drug Prevention and Treatment Projects for Substance-Abusing Women and Their Children

**AGENCY:** Office for Substance Abuse Prevention, ADAMHA, DHHS.

**ACTION:** Notice of availability of funds for demonstration grant(s) to support residential program(s) that offer substance abuse treatment and prevention services for women and their children in Weed and Seed neighborhoods of South Central Los Angeles, (LA) and nearby areas directly affected by the recent riots.

**SUMMARY:** This notice is to provide information to the public that the office for Substance Abuse Prevention (OSAP), in accordance with the President's Weed and Seed strategy, is targeting \$1 million to support residential substance abuse treatment for women and children in the LA Weed and Seed neighborhoods specified above. Because of the severity of the recent disturbances in LA, one or more grant awards will target special funding to assist specific LA neighborhoods affected by these disturbances.

Applications for the \$1 million being set aside for this special initiative must meet all of the requirements in the original Request for Applications (RFA) for Comprehensive Residential Drug Prevention and Treatment Projects for Substance-Abusing women and their Children (RFA No. SP-92-02) as published in the *Federal Register* on April 16, 1992. In addition to the criteria listed in the RFA, proposed projects must be developed in collaboration with the LA Weed and Seed initiative. Funding will be provided only for comprehensive residential programs serving women and children in the *LA Weed and Seed neighborhoods* of South Central LA and nearby areas directly affected by the riots. Applications will be accepted only for new demonstration programs to be carried out by organizations that are already serving or willing and able to expand to the LA Weed and Seed service areas.

**Application Procedures and Contact:** A signed original and 2 copies of the completed application form PHS 5161-1 and appendices must be received on or before August 7, 1992. Applications must be sent to: Dr. Patricia Straat, Division of Research Grants Referral Office, Westwood Building, room 248, 5333 Westbard Avenue, Bethesda, MD 20892 (20816 is Zip code for express mail).

For information on application and submission procedures, to obtain an application kit, or to obtain a copy of the original RFA referenced above, contact the following individual: Dr. Averette Parker, Chief, Perinatal Addiction Prevention Branch, Division of Demonstrations and Evaluations, Office for Substance Abuse Prevention, telephone: 301-443-4564.

OSAP will conduct an objective review of applications received. The receipt, review, and award process will be handled in an expedited manner. It is anticipated that award(s) will be made in September 1992.

#### Authority

Award(s) will be made under the authority of section 509F of the Public Health Service Act and Public Law 102-141. The Catalog of Federal Assistance number for this program is 93.937.

Joseph R. Leone,

*Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 92-18722 Filed 7-15-92; 8:45 am]

BILLING CODE 4160-20-M

## Centers for Disease Control

### National Institute of Occupational Safety and Health

[Program Announcement Number 263]

#### Reducing Work-Related Musculoskeletal Disorders Among Carpenters or Related Construction Workers; Availability of Funds for Fiscal Year 1992

##### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year 1992 funds for a cooperative agreement to conduct surveillance for work-related musculoskeletal disorders and to develop and conduct ergonomic hazard identification programs, and ergonomic training programs among carpenters or related construction workers.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

##### Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1990 (29 U.S.C. 670 (a)).

##### Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

##### Availability of Funds

Approximately \$650,000 will be available in FY 1992 to fund up to three awards. It is expected that the awards will begin on or about September 30, 1992, for a 12-month budget period within a project period of up to three years. Each of the components for hazard assessment, surveillance and training should not exceed \$150,000 and the longitudinal study should not exceed \$50,000. Proposals for hazard assessment and training must include both of these components. Funding

estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

##### Purpose

The overall goal of the cooperative agreement is to reduce work-related musculoskeletal disorders (WMD) of the upper and lower extremities and the back (e.g., tendinitis, arthritis, and nerve compression syndromes, such as carpal tunnel syndrome) among carpenters or related construction workers (e.g., carpenters helpers, dry wall installers, plasterers, etc.).

The recipient should focus on one or more of the following four tasks:

I. Develop, implement, and evaluate a national, health surveillance system for WMD among carpenters or related construction workers.

II. Develop, implement, and evaluate a Hazard Identification Program for carpenters or related construction workers.

III. Develop, implement, and evaluate ergonomic training programs for carpenters and related personnel who are instrumental in the prevention of WMD in carpenters or related construction workers. Once developed and tested, the program can be applied to carpenters nationally.

IV. Determine the feasibility of conducting longitudinal health studies of WMD among carpenters or related construction workers.

##### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

##### I. Develop a Health Surveillance Program

The objectives of the surveillance program are to: 1) support the development and implementation of national, health surveillance activities for work-related musculoskeletal disorders (WMD) among carpenters or related construction workers; 2) encourage systematic and periodic evaluation of established or ongoing health surveillance activities for WMD; 3) explore the utility of suitable health surveillance systems in estimating incidence/prevalence rates of WMD among carpenters or related construction workers; and 4) encourage the dissemination of surveillance information to target ergonomic intervention strategies for prevention of

WMD among carpenters or related construction workers.

#### A. Recipient Activities

1. Develop, in collaboration with CDC, a protocol to design a national, health surveillance system for WMD among carpenters or related construction workers. Such a protocol would include:

a. An inventory of existing surveillance data sources. Possible surveillance data sources include: workers' compensation claims (WCC) data, health insurance data, pension records, and other available data. As part of this activity, the recipient should identify managers of local joint labor-management health insurance funds who would be willing to discuss implementation of a surveillance program

b. Criteria for selecting data sources appropriate for inclusion in a surveillance system.

c. Case definitions for various target disorders.

d. Procedures to ensure confidentiality of individual information.

e. Procedures to ensure that the available systems of data are compatible with automatic data processing (ADP) and, if not compatible, establish a plan for data extraction and conversion to ADP.

f. Procedures for ensuring the data quality.

g. Analysis plans for the assessment of each target disorder.

2. Collect data following protocol procedures.

3. Based on the protocol, perform data analysis to ascertain trends and patterns of importance.

4. Identify the high-risk work tasks and processes to provide guidance for intervention efforts.

5. Determine, over time, the effectiveness of intervention activities.

6. Seek publication of worthy findings in trade publications or peer-reviewed occupational health and safety journals.

#### B. CDC Activities

1. Collaborate in the protocol development.

2. Collaborate in the development of an appropriate data system and methodological approaches to analyzing the data.

3. Provide the recipient with assistance/consultations in conducting the analysis over time.

4. Assist in the development of quality assurance of reported data.

5. Assist in interpretation of the data analysis and their possible application toward intervention activities.

6. Collaborate in the dissemination of important surveillance findings.

#### II. Develop A Hazard Identification Program

The overall objective of WMD hazard identification is to summarize the existing information about WMD hazards encountered by carpenters or related construction workers through the conduct of a WMD Hazard Identification Workshop and the development of a Worksite Hazard Identification Program. The information from both the Workshop and the Worksite Hazard Identification Program will be used to develop the curriculum of the training program for the carpenters or related construction workers and for consideration of changes in work practices, tools, materials and other approaches to reducing the risks of WMD.

The objective of the WMD Hazard Identification Workshop is to convene researchers, carpenters, related construction workers, contractors and other interested parties to discuss currently identified hazards and risk factors of WMD, proposed solutions to WMD hazards to prevent WMD in carpenters, and produce a report summarizing the information.

The objective of the Worksite Hazard Identification Program is to develop a program to identify and characterize the worksite occupational hazards of carpenters or related construction workers associated with WMD. These hazards may include, but are not limited to: inadequate or insufficient knowledge of good work practices; improper materials handling (practices or materials); manner and use of tools and equipment which are not ergonomically designed (such as prolonged overhead work with tools); awkward movements, repetition, forceful postures, vibration, extreme temperatures; and adverse work organizational factors. The information obtained from the worksite hazard identification program will be integrated into the curriculum of the training program described in Section III. The worksite identification program may be conducted by a team of ergonomists, occupational health professionals, trained workers and other appropriate individuals.

#### A. Recipient Activities

1. Develop, in collaboration with CDC, a comprehensive written plan for the workshop including suggested topics, speakers, location of workshop, and dates.

2. Organize and carry out the workshop.

3. Prepare a written report within three months of the completion of the workshop summarizing the information

on WMD in carpenters and related construction workers and proposing recommendations for controls of WMD, including possible interventions.

4. Develop, in collaboration with CDC, a comprehensive protocol describing the worksite hazard identification program. The protocol should contain:

a. A summary of information about workplace hazards for WMD among carpenters or related construction workers learned during the workshop.

b. Procedures for the use of focus groups and other types of meetings of working carpenters or related construction workers from sites throughout the country to obtain information on WMD hazards and recommendations for possible solutions.

c. Plans for a comprehensive, systematic Worksite WMD Hazard Identification Program based on the combined information learned from the workshop and focus groups. The plan should include: (1) Plans for selecting worksites, including number of sites, types of hazards to evaluate, etc.; (2) new or existing methods for assessment of worksite WMD hazards (e.g., checklists, videotapes); and (3) composition of the identification team, including trained ergonomists, occupational health professionals and carpenters or related construction workers.

d. Plans for evaluating the Hazard Identification Program, worksite data collection methods, and data collected through the program.

e. Plans for prioritizing hazards identified through the Hazard Identification Program based on prevalence of WMD hazards, feasibility of change, severity of related WMD, and other criteria to be determined.

f. Plans for developing possible solutions or interventions for hazards identified as high priority through the workshop and worksite hazard identification program.

5. Plans for conducting systematic identification of worksite WMD hazards following the approved protocol.

6. Evaluation of the data and data collection procedures.

7. Prioritization of hazards identified through the Worksite Hazard Identification Program as specified in the protocol.

8. Selection of the top 5-10 hazards (determined to be feasible), to develop possible solutions or interventions for integration and further development in the training programs described in section III. For example, worksite simulations in the apprentice program may provide a suitable environment for

implementing and evaluating the possible solutions.

9. Development of possible solutions and interventions for top 5-10 worksite hazards identified in II.C.1.e.

10. Development of a report suitable for publication, documenting the process of identifying hazards and possible solutions.

#### B. CDC Activities

1. Collaborate in the development of a comprehensive written plan for the workshop.

2. Collaborate in the development of a comprehensive protocol describing the Worksite Hazard Identification Program.

3. Assist in the evaluation of the data collected through the Hazard Identification Program.

4. Collaborate in the dissemination of important findings.

#### III. Develop Ergonomic Training Program

The training program will be designed to teach the principles and practices of ergonomics, describe hazards among carpenters or related construction workers, and present selected solutions and interventions.

Joint labor-management training programs in construction, such as apprentice programs, were selected as a target for the ergonomic training program because commitment on the part of both labor and management is essential for this program to be successful and because training may be more effective for less experienced workers. Historically, carpenters and related construction workers rarely work for prolonged periods at a single worksite, so that traditional methods of occupational health have been difficult to conduct successfully. Occupational health and ergonomic training modules can be incorporated in the training program. Hence, the training program provides a conduit for reaching a large number of carpenters or related construction workers and integrating principles of occupational health and ergonomics, including good work practices, tool designs, etc.

The goals of the ergonomic training course are to: (1) Reduce or eliminate WMD and associated hazards for carpenters or related construction workers; (2) enhance awareness of WMD among trainers, carpenters or related construction workers; (3) enhance awareness of job-related ergonomic stressors; (4) Enable carpenters or related construction workers to use systematic approaches to identifying job stressors; and (5) enable carpenters or related construction workers to formulate strategies or

identify existing controls to reduce or eliminate job stressors.

#### A. Recipient Activities

1. Develop and implement, in collaboration with CDC, a comprehensive training program for carpenters or related construction workers.

The ergonomic training program will include:

a. Description and explanation of WMD.

b. Principles of ergonomics.

c. Risk factors and hazards for WMD associated with carpentry or related construction work as an occupation.

d. Techniques for work-site job analysis.

e. Techniques for identification of risk factors and hazards.

f. Control strategies.

g. Discussion and utilization of interventions and solutions to ergonomic problems and hazards, incorporating the information on the 5-10 top worksite hazards for carpenters or related construction workers and the appropriate solutions developed through the Worksite Hazard Identification Program.

2. Develop, in collaboration with CDC, a comprehensive protocol for the training program.

3. Following peer review of the program plans, pilot test the training program.

4. Evaluate the effectiveness of the pilot training program and modify the teaching materials and methods.

5. Implement the training program.

6. Evaluate the training program.

Evaluation may include pre-testing and post-testing of students, student evaluation of the course, and longer term follow-up assessment of the course by both instructors and the students.

#### B. CDC Activities

1. Collaborate in the development of comprehensive training program for carpenters or related construction workers.

2. Collaborate in the development of the comprehensive protocol for the training program.

3. Collaborate in the organization of peer review of program plans and evaluation plans.

4. Provide on-site technical consultation during the pilot test of the training program with recommendations to assist the trainers.

5. Provide training materials, such as video tapes and published documents, to the recipient, when appropriate and available.

6. Provide technical assistance in the evaluation of the results and efficacy of the training program.

7. Assist in the dissemination of training information to appropriate personnel.

#### IV. Determine the Feasibility of Conducting Longitudinal Health Studies of WMD Among Carpenters and Related Construction Workers

The objective of this activity is to determine whether prospective epidemiological studies of carpenters or related construction workers can be facilitated by other components of the program.

#### A. Recipient Activities

1. Determine, in collaboration with CDC, if it is feasible to follow over time cohorts of carpenters or related construction workers, by estimating the number of workers at each training site, the turnover rate of workers in training, and whether it would be possible to build into the training program a periodic health examination of WMD of carpenters or related construction workers.

2. If feasible, describe methods to accomplish IV.A.1.

3. Develop a timetable for implementation of all components of the proposed project.

#### B. CDC Activities

1. Provide technical assistance and consultation during in the feasibility assessment.

2. Coordinate review of protocols for the longitudinal study by CDC and other occupational health experts.

3. Assist in the analysis and interpretation of data collected during the feasibility assessment.

#### Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) the proposed schedule for initiating and accomplish among each of the activities of the cooperative agreement, and (b) the proposed method for evaluating the accomplishments. (20%)

3. Strength and comprehensiveness of the training program plan which addresses the distinct characteristics

and needs of the target audience and which includes the essential program elements for planning, conducting and evaluating training programs. (25%)

4. The ability to involve joint labor management training programs, such as apprentice programs, in construction. (10%)

5. The ability to conduct surveillance based on workers' compensation, health insurance data, and other surveillance data sources. (5%)

6. Experience in delivering occupational health and ergonomics programs for the target population, particularly in a labor-management cooperative environment. (10%)

7. The qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allotted for them to accomplish program activities; support staff available for the performance of this project; and the facilities, space and equipment available for performance of this project. (10%)

8. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

#### Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

#### Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

#### Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before August 25, 1992.

1. **Deadline:** Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to

the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. **Late Applications:** Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

#### Where To Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 263. You will receive a complete program description, information on application procedures, and application forms.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from Marie Haring Sweeney, Ph.D., Industrywide Studies Branch, Division of Surveillance, Hazard Evaluation and Field Studies, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841-4481.

Please refer to Announcement Number 263 when requesting information and submitting an application.

Potential applicants may obtain a copy of Health People 2000 (Full Report, Stock No. 017-001-00474-0) or Health People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone: 202-783-3238).

Dated: July 10, 1992.

J. Donald Millar,  
Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 92-16715 Filed 7-15-92; 8:45 am]

BILLING CODE 4160-19-M

#### Public Health Service

#### Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on May 24, 1991, by the Assistant Secretary for Health, the Administrator has delegated to the officials indicated, the following authorities under title XXVI of the Public Health Service Act (42 U.S.C. 300ff *et seq.*), as amended hereafter, pertaining to the HIV Health Care Services:

1. To the Director, Bureau of Health Resources Development:

a. Authority under part A for Emergency Relief for Areas with Substantial Need for Services, excluding the authority under section 2601(b), pertaining to the Requirement Regarding Confirmation of Cases; and

b. Authority under part B for the Care Grant Program.

2. To the Director, Bureau of Health Care Delivery and Assistance:

Authority under part c, subpart II, for Categorical Grants.

3. To the Director, Maternal and Child Health Bureau:

Authority under part D, for General Provisions as they pertain to the functions assigned to the Maternal and Child Health Bureau, excluding the authority under sections 2671(c)(2) pertaining to the analysis and evaluation of research protocol, 2672 pertaining to provisions relating to blood banks, and 2673 pertaining to Research, Evaluation, and Assessment Program.

The delegation from the Assistant Secretary for Health excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, establish advisory committees and councils, and select members to advisory councils.

#### Redelegation

These authorities may be redelegated.

#### Prior Delegations

The July 12, 1991 delegation has been superseded.

#### Effective Date

The delegation was effective on

Dated: July 7, 1992.

R.G. Harmon,

Administrator, Health Resources and Services Administration.

[FR Doc. 92-16723 Filed 07-15-92; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[AK-967-4230-15; AA-10494, AA-10499]

## Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2850.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1) will be issued to Sealaska Corporation. The lands involved are in the vicinity of Port Malmesbury and Security Bay, Kuiu Island, Alaska.

Serial No.	Land description
AA-10494.....	T. 64 S., R. 72 E., C.R.M.
AA-10499.....	T. 58 S., R. 71 E., C.R.M.

A notice of the decisions will be published once a week, in the *Wrangell Sentinel*. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until August 17, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92-16712 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-JA-M

[WO-150-00-4830-11]

## National Public Lands Advisory Council; Meeting

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of meeting of the National Public Lands Advisory Council.

**SUMMARY:** Notice is hereby given that the National Public Lands Advisory Council will meet Monday, July 27, 1992, at the Anchorage Hilton Hotel, 500 West

Third Avenue, Anchorage, Alaska, phone (907) 272-7411. Meeting hours will be 8 a.m. to 4 p.m. on Monday, July 27.

The proposed agenda for the meeting is:

Opening remarks by National Public Lands Advisory Council Chairman Mark Murphy and BLM Alaska State Director Ed Spang. Welcoming remarks by Honorable Tom Fink, Mayor of Anchorage, and Malcolm Roberts, Senior Advisor to the Governor of Alaska.

The Council presently has several ongoing task force groups. These groups advise and counsel the BLM regarding public land issues, such as mining and user fees. A summary will be given on the status of the work of each task force. The BLM will provide briefings for the Council on pertinent Alaska public land issues. During the week, the Council will visit various points of interest in Alaska to further their knowledge of the State and BLM Alaska.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council beginning at 1 p.m. on Monday, July 27. Speakers should address specific national public land issues and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments to the BLM's Alaska State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

**DATES:** Monday, July 27, 1992—National Public Lands Advisory Council Meeting.

**ADDRESSES:** Copies of public statements should be mailed to: Mr. David Vickery, Alaska State Office (912), 222 West 7th Avenue, #13, Anchorage, Alaska 99513-7599, phone (907) 271-5555.

**FOR FURTHER INFORMATION CONTACT:** Nan Morrison, Washington, DC Office, BLM, telephone (202) 208-5101.

**SUPPLEMENTARY INFORMATION:** The Council advises the Secretary of the Interior through the Director, BLM, regarding policies and programs of a national scope related to the public lands and resources under the jurisdiction of BLM.

Date Signed: July 10, 1992.

Susan Lamson,

Deputy Director.

[FR Doc. 92-16681 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-84-M

## Salmon District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Rescheduling of meeting.

**SUMMARY:** The Salmon District Advisory Council will meet on Wednesday, July 29, 1992, at the Library, in Leadore, Idaho. This meeting has been rescheduled from the originally announced date of July 8, 1992. The meeting will convene at 10 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** The meeting is held in accordance with Public Laws 92-463 and 94-579. The purpose for the meeting is to discuss the proposed Federal Energy Regulatory Commission projects on Challis/Bear Creeks and Morgan Creek, the White Knob Trestle project, the status of the Challis Resource Management Plan, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by July 24, 1992.

Summary minutes to the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: July 6, 1992.

Jerry A. Wilfong,

Acting District Manager.

[FR Doc. 92-16739 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-4212-13; GP2-313; OR-44812]

## Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 857.75 acres of public land out of Federal ownership. This action will also open 5,013.41 acres of reconveyed lands to surface entry and 2,795.05 acres to mining and mineral

leasing. The minerals in the 2,218.36-acre balance are not in Federal ownership.

**EFFECTIVE DATE:** August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

**SUPPLEMENTARY INFORMATION:**

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 857.75 acres in Clackamas County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

**Willamette Meridian**

T. 6 S., R. 3 E.,

Sec. 7, lots 1, 2, 3, and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , and those portions of the W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SE $\frac{1}{4}$  as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

Sec. 18, W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 19, lots 2, 3, and 4, W $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;

Secs. 30 and 31;

Sec. 32, W $\frac{1}{2}$ W $\frac{1}{4}$ .

T. 7 S., R. 3 E.,

Sec. 6, lots 2, 4, and 5, and SW $\frac{1}{4}$ NE $\frac{1}{4}$ ;

Sec. 7, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;

Sec. 10, N $\frac{1}{2}$ N $\frac{1}{4}$  and S $\frac{1}{2}$ S $\frac{1}{4}$ ;

Sec. 15, S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , and that portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$  as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

Sec. 16, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and those portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

Sec. 17, S $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and N $\frac{1}{2}$ SE $\frac{1}{4}$ .

The areas described aggregate 5,013.41 acres in Clackamas County.

3. The minerals in Secs. 7, 8, 10, 15, 16, and 17, T. 7 S., R. 3 E., and that portion of lot 2 in Sec. 7, T. 6 S., R. 3 E., containing 1.36 acre as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office, are not in Federal ownership and will not be open to mining and mineral leasing.

4. At 8:30 a.m., on August 21, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of

applicable law. All valid applications received at or prior to 8:30 a.m., on August 21, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on August 21, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on August 21, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: July 7, 1992.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-16738 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-33-M

[NM-930-02-4212-02]

**Redelegation of Authority for Lands Casework, New Mexico**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Redelegation of authority.

**SUMMARY:** Pursuant to the authority in Bureau Manual 1203 dated July 17, 1990, the State Director, New Mexico State Office, has redelegated the authority for all Lands and Realty functions and responsibilities from NM (930) to NM (920).

**EFFECTIVE DATE:** July 12, 1992.

**ADDRESSES:** Comments should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico 87502-7115.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Hougland, BLM, New Mexico State Office, 505-438-7593.

**SUPPLEMENTARY INFORMATION:** Due to a recent reorganization in the New Mexico State Office, all Lands and Realty functions and responsibilities in

the Division of Lands and Renewable Resources are redelegated, effective July 12, 1992, to the Division of Lands and Minerals. All land patents, other conveyance documents, and disclaimers, including patents for Conveyances of Mineral Interest, will now be signed by the Deputy State Director for Lands and Minerals.

Dated: July 2, 1992.

Monte G. Jordan, Associate,  
State Director.

[FR Doc. 92-16665 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-FB-M

**Fish and Wildlife Service**

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (FWS 0007), Washington, DC 20503, telephone 202-395-7340.

**Title:** Study of Landowner Attitudes and Perceptions of Prairie Pothole Region Wetlands.

**OMB Approval Number:** N/A.

**Abstract:** The perspectives and attitudes of landowners in the prairie pothole regions towards wetland preservation, restoration, conversion, and government wetland programs influence the effectiveness of existing and future wetland programs of state and federal agencies. This study will allow the Service to obtain quantitative information on various approaches to implementation of wetland management, restoration, creation, and acquisition programs.

**Service Form Number:** N/A.

**Frequency:** One time only.

**Description of Respondents:** Individuals and households.

**Estimated Completion Time:** 20 minutes (0.33 hours).

**Annual Responses:** 6,000.

**Annual Burden Hours:** 2,000.

**Service Clearance Officer:** James E. Pinkerton, 703-358-1943, Mail Stop-224

Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: June 5, 1992.

Suzanne Mayer,

Acting Regional Director, Region 8.

[FR Doc. 92-16667 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-55-M

# **Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (FWS-0002), Washington, DC 20503, telephone 202-395-7340.

**Title:** Study of the Economic Values Associated with Resident Hunting and Trapping in Prairie Pothole Region Wetlands.

**OMB Approval Number:** FWS 002.

**Abstract:** This is a research project designed to estimate the value of wetland related consumptive wildlife uses. Respondents supply information regarding wetland-related hunting and trapping activities and expenditures for the 1991 season. Such information is sought in order to assist the Service and other federal agencies in better implementing their wetland management programs and environmental assessment responsibilities.

**Service Form Number:** N/A.

**Frequency:** One time only.

**Description of Respondents:**

Individuals and Households in North and South Dakota and Minnesota.

**Estimated Completion Time:** 20 minutes.

**Annual Responses:** 5,610.

**Annual Burden Hours:** 1,851.

**Service Clearance Officer:** James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: June 5, 1992.

Suzanne Mayer,

Acting, Regional Director, Region 8.

[FR Doc. 92-16668 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-55-M

## **National Park Service**

### **Order Adjusting the Boundary of Rocky Mountain National Park, CO, to Include Certain Lands**

**AGENCY:** National Park Service.

**ACTION:** Boundary adjustment order.

**SUMMARY:** Pursuant to the authority contained in the Act of November 29, 1989, 103 Stat. 1700, 16 U.S.C. 192b-10, and as certain lands authorized for acquisition by the Secretary of the Interior have now been acquired, the boundaries of Rocky Mountain National Park are being adjusted accordingly.

**DATES:** The effective date of this order shall be July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Chief, Land Resources Division, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225-0287, (303) 969-2610.

**SUPPLEMENTAL INFORMATION:** The above-cited Act authorizes the Secretary of the Interior to acquire certain lands adjacent to Rocky Mountain National Park and, upon acquisition, to adjust the park boundary to include such lands within the park. The total acreage of Rocky Mountain National Park will be increased by 59.45 acres by this boundary adjustment.

Subject to valid existing rights, the following described lands are hereby added to Rocky Mountain National Park to be administered in accordance with the laws and regulations applicable thereto:

Township 4 North, Range 73 West, 6th Principal Meridian, Larimer County, Colorado.

Lots 1,2,3 and 5 through 15, inclusive, Baldpate Estates, according to the plat thereof recorded April 3, 1986, at Reception No. 86016631.

Containing 59.45 acres, more or less.

Dated: July 6, 1992.

Boyd Evison,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 92-16708 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## **National Park Service**

### **Availability of the Draft Comprehensive River Conservation Study and Draft Environmental Impact Statement for the Hanford Reach of the Columbia River**

**ACTION:** Notice of availability of the draft comprehensive river conservation study and draft environmental impact statement for the Hanford Reach of the

Columbia River and schedule of public meetings.

Four management alternatives were developed to provide permanent protection to the Hanford Reach, in addition to the No Action alternative required by the National Environmental Policy Act. The Proposed Action recommends the Hanford Reach study area, 51 miles of river and approximately 86,000 acres of habitat, be designated as a National Wildlife Refuge and Wild and Scenic River, under U.S. Fish and Wildlife Service management. This alternative includes two options which impact the designating boundaries. Option 1 excludes private agricultural lands, and Option 2 includes private agricultural lands. The Hanford Reach is the last unimpounded segment of the Columbia River and includes critical spawning and rearing habitat for the fall chinook salmon, numerous historic and archaeological sites, biodiversity representative of the original Columbia Basin, threatened and endangered plant and animal species, and various recreational activities.

**DATES AND ADDRESSES:** The public is invited to comment on the Draft Comprehensive River Conservation Study and Draft Environmental Impact Statement. The public comment period will end Monday, September 7, 1992. Written comments should be mailed to Kristen Sycamore, National Park Service, Pacific Northwest Regional Office, 83 South King Street, suite 212, Seattle, Washington 98104. Comments received will be considered in the development of the final Comprehensive River Conservation Study and Environmental Impact Statement.

Public meetings to receive oral and written comments on this draft have been scheduled as follows:

Thursday, July 23, 1992 at 7 p.m.—Henry M. Jackson Federal Building, Room 166, 915 Second Avenue, Seattle, Washington

Monday, July 27, 1992 at 7 p.m.—Basin City Firehall, Road #170, Basin City, Washington

Tuesday, July 28, 1992 at 7 p.m.—Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kristen Sycamore, National Park Service, Pacific Northwest Regional Office, 83 South King Street, suite 212, Seattle, Washington 98104, phone number (206) 553-5366. Reading copies will be available at the National Park Service, Pacific Northwest Regional Office (see above address); Seattle

Public Library (Government Publications Section), 1000 4th Avenue, Seattle, Washington; Department of Energy, Richland Field Office Reading Room, 825 Jadwin Avenue, Richland, Washington; Columbia National Wildlife Refuge, 735 East Main Street, Othello, Washington; U.S. Fish and Wildlife Service, 3704 Griffin Lane SE., suite 102, Olympia, Washington; Richland Public Library (Reference Section), 955 Northgate Avenue, Richland, Washington; and the Public Affairs Office, National Park Service, U.S. Department of the Interior, 18th and C Streets NW., room 3424, Washington, DC 20240.

Dated: June 26, 1992.

Jonathan P. Deason,  
Director, Office of Environmental Affairs.  
[FR Doc. 92-16703 Filed 7-15-92; 8:45 am]  
BILLING CODE 4310-70-M

#### **Niobrara/Missouri National Scenic Riverways; Intent to Prepare an Environmental Impact Statement**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the Missouri National Recreation River; Boyd and Knox Counties, Nebraska, and Charles Mix, Bon Homme, and Gregory Counties, SD.

**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq. and 42 U.S.C. 4332, as amended) and the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 et seq.), will prepare an environmental impact statement (EIS) to determine the boundary and future management practices for a 39-mile segment of the Missouri River between Ft. Randall dam and the head of the Lake Lewis and Clark, and also including the lower 25 miles of the Niobrara River east of the Knox County line and the lower eight miles of Verdigre Creek downstream of the town of Verdigre, Nebraska. In 1991, Congress designated the above river segments as a "recreation" unit of the National Wild and Scenic River System.

A range of alternatives will be considered in the EIS. These alternatives will analyze various management and protection practices and their impacts on natural resources, recreation use, and other current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. Nine public meetings were held in April and May, and a newsletter summarizing information gained will be mailed during

the summer. Additional comments may be sent to the below address. The scoping process includes:

1. Identification of potential issues.
2. Identification of potential impact topics and topics to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

The responsible official is Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska. The draft Environmental Impact Statement is expected to be available for public review in summer 1994.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the Environmental Impact Statement, by October 1, 1992, to Mr. Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, phone (402) 336-3970.

Dated: July 19, 1992.

William W. Schenk,  
Regional Director, Midwest Region.  
[FR Doc. 92-16813 Filed 7-15-92; 8:45 am]  
BILLING CODE 4310-70-M

#### **Niobrara/Missouri National Scenic Riverways; Intent To Prepare an Environmental Impact Statement**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for Missouri National Recreational River; Cedar and Dixon Counties, Nebraska, and Yankton, Clay, and Union Counties, SD.

**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq. and 42 U.S.C. 4332, as amended) and the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 et seq.), will prepare an environmental impact statement (EIS) to determine the boundary and future management practices for a 59-mile segment of the Missouri River between Gavins Point dam and Ponca State Park, Nebraska. In 1978, Congress designated the above river segment as a "recreation" unit of the Wild and Scenic River System, and a general management plan was approved in 1980. The river segment has been under

management of the Army Corps of Engineers, by memorandum of agreement with the National Park Service.

The existing general management plan is in need of revision. A range of alternatives will be considered in the EIS. These alternatives will analyze various management and protection practices and their impacts on natural resources, recreation use, and other current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. Nine public meetings were held in April and May, and a newsletter summarizing information gained will be mailed during the summer. Additional comments may be sent to the below address. The scoping process includes:

1. Identification of potential issues.
2. Identification of potential impact topics and topics to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

The responsible official is Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska. The draft Environmental Impact Statement is expected to be available for public review in summer 1994.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the Environmental Impact Statement, by October 1, 1992, to Mr. Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, phone (402) 336-3970.

Dated: July 9, 1992.

William W. Schenk,  
Regional Director, Midwest Region.  
[FR Doc. 92-16815 Filed 7-15-92; 8:45 am]  
BILLING CODE 4310-70-M

#### **Niobrara/Missouri National Scenic Riverways; Intent To Prepare an Environmental Impact Statement.**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the Niobrara National Scenic River; Brown, Cherry, Keya Paha, and Rock Counties, NE.

**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq and 42 U.S.C. 4332, as amended) and the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 et seq.), will prepare an environmental impact statement (EIS) to determine future management practices for the Niobrara National Scenic River east of Valentine, Nebraska. In 1991, Congress designated a 40-mile segment and a 30-mile segment between Borman Bridge and State Highway 137 bridge as a "scenic" unit of the National Wild and Scenic Rivers System. The six-mile connection between Chimney Creek and Rock Creek was included in this designation, but only if Congress does not authorize and appropriate funding for a water resource project on this segment within 5 years. This EIS will both determine whether the 6-mile segment meets criteria for inclusion in the National Wild and Scenic River System and determine future management practices should designation occur.

A range of alternatives will be considered in the EIS. These alternatives will analyze various management and protection practices and their impacts on natural resources, recreation use, and other current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. Nine public meetings were held in April and May, and a newsletter summarizing information gained will be mailed during the summer. Additional comments may be sent to the below address. The scoping process includes:

1. Identification of potential issues.
2. Identification of potential impact topics and topics to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

The responsible official is Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska. The draft Environmental Impact Statement is expected to be available for public review in summer 1994.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the Environmental Impact Statement, by October 1, 1992, to Mr. Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri

National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, phone (402) 336-3970.

Dated: July 9, 1992.

William W. Schenk

Regional Director, Midwest Region.

[FR Doc. 92-16814 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

#### **Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting**

**AGENCY:** National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

**DATES:** August 14, 1992 1:30 p.m.

**INCLEMENT WEATHER RESCHEDULE DATE:** None.

**ADDRESSES:** Carbon County Court House—Annex, Emergency Management Office, Lehigh Avenue, 3rd Floor, Jim Thorpe, PA.

**FOR FURTHER INFORMATION CONTACT:** Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, Room P-208, Bethlehem, PA 18018 (215) 861-9345.

**SUPPLEMENTARY INFORMATION:** The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Joseph W. Gorrell,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92-16706 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

#### **Delta Region Preservation Commission; Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, August 19, 1992, in the President's Conference Room on the 10th Floor of the Joseph Yenni Building, Jefferson Parish, 1221 Elmwood Park Boulevard, Harahan, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

- Superintendent's Report on all Units
- Update on Atchafalaya and Jazz Studies
- Discussion of Barataria Marsh Management
- Old Business
- New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, Telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: July 6, 1992.

Richard W. Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 92-16816 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

**Gettysburg National Military Park Advisory Commission; Meeting**

**AGENCY:** Gettysburg National Military Park Advisory Commission, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date of the fourth meeting of the Gettysburg National Military Park Advisory Commission.

**DATE:** July 30, 1992.

**TIME:** 2 p.m.-4 p.m.

**INCLEMENT WEATHER RESCHEDULE DATE:** None.

**ADDRESS:** Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

**AGENDA:** To include, but not limited to, status of "Killer Angels", Sub-Committee reports to include a status briefing on the Historical Committee's public meeting, the Secretary's Battlefield Preservation Program update, and an operational update on the park.

**FOR FURTHER INFORMATION CONTACT:**

Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

Joseph W. Gorrell,

*Acting Regional Director, Mid-Atlantic Region.*

[FR Doc. 92-16704 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

**Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Meeting of the Sudbury, Assabet and Concord Rivers Study Committee**

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, July 30, 1992.

The Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the

study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. at the Hunt Gymnasium, 90 Stow Street, Concord, MA, (to get to the gymnasium from Route 2 westbound, turn right onto Sudbury Road (first major intersection past Route 126). Follow Sudbury Road for 0.9 miles to Stow Street, which is the last left before Sudbury Road terminates at Main Street. The Hunt Gymnasium is at the end of the street on the right (parking on left).

**Agenda**

1. Welcome, introductions—Bill Sullivan;
2. Approval of minutes from 6/30 meeting;
3. Public Involvement Subcommittee report;
4. Resource Inventory update—Julia Blatt; A. Status Reports from Towns;
5. Overview of Wild and Scenic Rivers Act—Drew Parkin;
6. Opportunity for Public Comment;
7. Other Business;
- A. Next Meeting Dates and Location.

Dated: July 6, 1992.

John J. Burchill,

*Acting Regional Director.*

[FR Doc. 92-16709 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

**Completion of Inventory of Native American Human Remains and Associated Funerary Objects From the Dorchester Burials of Marlboro, MA**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects from the four Dorchester burials of Marlboro, MA, now housed at the R.S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810. Representatives of culturally affiliated Indian tribes are advised that the human remains and associated funerary objects from the Dorchester burials will be retained by the museum until August 16, 1992, after which they may be repatriated to culturally affiliated groups.

The detailed inventory and assessment of the human remains and associated funerary objects from the Dorchester burials was made by Dr. Michael F. Gibbons, Jr. of the Department of Anthropology, University of Massachusetts, Boston, MA, in consultation with representatives of the Nipmuc Tribal Council. Osteological documentation of the remains indicates they are Native American. All four burials were found within the boundaries of the 17th century Indian Praying Town of Okommakamesit. The four burials appear to have been closely related, both spatially and culturally; all were extended, supine, and interred in coffins with no associated funerary objects, save nails, hinges, locks from the coffins. These traits are consistent with data from other Praying Indian mortuary sites in Massachusetts. The location and mortuary treatment argue strongly that these individuals were associated with the Okommakamesit Praying Town.

Cultural affiliation is difficult to determine for the occupants of the Praying Towns. Due to tremendous population loss and mixing during the 17th century, the cultural affiliation of the residents was not clear even at the time this Praying Town was occupied. Based on available sources, however, Nipmuc is the most appropriate tribal group. It is the considered opinion of the Massachusetts Commission on Indian Affairs that the Nipmuc are the most appropriate claimants.

Representatives of any Indian tribe believed to be culturally affiliated with the human remains and associated funerary objects from the Dorchester burials that have not been consulted should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover MA 01810, (508) 749-4490, before August 16, 1992.

Dated: July 6, 1992.

Francis P. McManamon,

*Departmental Consulting Archeologist, Chief, Archeological Assistance Division.*

[FR Doc. 92-16705 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

**INTERNATIONAL TRADE COMMISSION**

[322-327]

**Steel: Semiannual Monitoring Report; Investigation**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Fulcher, Office of Industries/Minerals and Metals Division (202-205-3434), or Mr. Mark Paulson, Office of Industries/Minerals and Metals Division (202-205-3429), U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202-205-2648.

#### Background and Scope of Investigation

Following receipt on June 11, 1992, of a request from the Committee on Ways and Means of the U.S. House of Representatives, the Commission on July 9, 1992, instituted investigation No. 332-327, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning the status of, and prospects for, the U.S. steel industry for the period from January 1991 through December 1994.

As requested by the Committee, the Commission will provide semiannual reports in which it will seek to combine concise analysis of global industry trends and competitiveness issues with key product trade information. The reports will generally follow the format of, and contain trade data and information similar to that provided in, the reports on all carbon and alloy (including stainless steel) mill products which the Commission provided under investigation No. 332-226: Quarterly Report on the Status of the Steel Industry. In addition, each year one of the reports will contain an annual review focusing primarily on developments and conditions in the U.S. industry and will highlight significant developments in the industry's competitiveness since 1990 (e.g., operating performance, capital expenditures and R&D, technology, and environmental expenditures).

As requested by the Committee, the Commission intends to submit its first report under the new series no later than September 1992 (covering data from January through June 1992). Subsequent reports will be submitted in April and September, with the April report containing the annual review of the domestic industry. Reports will be provided through April 1995.

#### Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report containing the Commission's annual review of the domestic industry.

Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than February 26, 1993; February 25, 1994; and February 24, 1995. All submissions should be addressed to the Secretary to the Commission at the Commission's Office in Washington, DC.

By order of the Commission.

Issued: July 10, 1992.

Paul R. Bardos,  
Acting Secretary.

[FR Doc. 92-16730 Filed 7-15-92; 8:45 am]

BILLING CODE 7020-02-M

#### INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub #417X)]

**CSX Transportation, Inc.—  
Abandonment Exemption—in  
Randolph County, WV**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904, the abandonment by CSX Transportation, Inc., of 4.58 miles of rail line between milepost BUL-0.00, near Norton, and milepost BUL-4.58, at Coalton, in Randolph County, WV subject to standard labor protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 17, 1992. Formal expressions of intent to file an offer<sup>1</sup> of financial assistance

<sup>1</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

under 49 CFR 1152.27(c)(2) must be filed by July 27, 1992, petitions to stay must be filed by July 31, 1992, and petitions for reconsideration must be filed by August 10, 1992. Requests for a public use condition must be filed by July 27, 1992.

**ADDRESSES:** Send pleadings referring to Docket No. AB-55 (Sub—No. 417X) to:

- (1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Charles M. Rosenberger—150, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 927-5610 (TDD for hearing impaired: (202) 927-5721).

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927-5721.)

Decided: July 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16765 Filed 7-15-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32074]

**Andrew M. Mueller, Jr., and Reading Blue Mountain and Northern Railroad Company—Continuance in Control—East Mahanoy & Hazleton Railroad Company**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission, under 49 U.S.C. 10505, exempts Andrew M. Muller, Jr. (Muller), and the Reading Blue Mountain and Northern Railroad Company, a class III rail carrier that is wholly owned by Muller, who also wholly owns the Blue Mountain and Reading Railroad Company, a class II rail carrier, from the prior approval requirements of 49 U.S.C. 11343 for their continuance in control of the East Mahanoy & Hazleton Railroad Company, which will become a class III rail carrier through the acquisition and operation of certain rail lines of Consolidated Rail Corporation, notice of

which is expected to be filed in Finance Docket No. 32076.

**DATES:** This exemption will be effective on August 17, 1992. Petitions for reconsideration must be filed by July 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927-5610 (TDD for hearing impaired: (202) 927-5721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

*Decided:* July 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16763 Filed 7-15-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 29, 1992 a proposed Consent Decree in *United States v. Asbestos Abatement and Disposal Corporation*, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M., and Administrative Order No. EPA-5-87-113A(a)-14 (issued July 9, 1987). The Consent Decree requires the defendant to pay a civil penalty of \$40,000 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree further requires the Defendant to cease all asbestos abatement activities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Asbestos Abatement*

and Disposal Corporation, D.J. Ref. No. 90-5-2-1-1381.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114-1748 (contact Assistant United States Attorney Arthur Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Assistant Regional Counsel Susan Tannenbaum); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, Room 1541, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Avenue NW., Washington, DC 20004, telephone (202) 347-7829. For a copy of the Consent Decree please enclose a check in the amount of \$2.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-16737 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

### Consent Decree in Action to Enjoin Violations of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that two Consent Decrees in *United States v. Danto Environmental Corp., et al.*, (N.D. Ohio), Civil Action No. C-87-1752, were lodged with the United States District Court for the Northern District of Ohio on July 6, 1992. The Consent Decrees provide for penalties for violating sections 112(c) and 114 of the Clean Air Act, 42 U.S.C. 7412(c) and 7414, as amended on November 15, 1990 by P.L. 101-549, and the National Emission Standards for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"), 40 CFR part 61, Subpart M, and require Defendant Standard Oil Company of Ohio and Defendant Norfolk and Western Railway Company to immediately achieve full compliance with the asbestos NESHAP.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural

Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States v. Danto Environmental Corp., et al.*, D.O.J. Ref. No. 90-5-2-1-1046.

The Consent Decrees may be examined at the Office of the United States Attorney, suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114-1704; at the Region V office of the U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$8.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 92-16734 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. North American Philips Corp.* (D. Me.), Civil Action No. 92-234-P-C, was lodged on July 1, 1992, with the United States District Court for the Maine. The complaint alleges continual violations of the national categorical pretreatment standards in the Nonferrous Metals Forming Category, 40 CFR 471.54 and the Nonferrous Metals Manufacturing Category, 40 CFR 421.105, at defendant's metal manufacturing facility in Lewiston, Maine. The consent decree requires Philips to pay a civil penalty of \$500,000, completely eliminate its discharge from the wastestreams that form the basis of the complaint, and construct a Supplemental Environmental Project worth \$580,000. The Supplemental Environmental Project involves the installation of closed loop and evaporation systems that will enable Philips to drastically decrease the amount of water that it currently discharges to the local POTW and recycle, in solid form, much of the waste that it had been discharging in its wastewater.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. North American Philips Corp.*, DOJ Ref. #90-5-1-1-3650.

The proposed consent decree may be examined at the Office of the United States Attorney, 100 Middle Street Plaza, East Tower, 6th Floor, Portland, ME 04101; the Regional Office of the Environmental Protection Agency, One Congress Street, Boston, MA; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$7.25, payable to the Consent Decree Library.

John C. Cruden,

Environmental Enforcement Section,  
Environment and Natural Resources Division.  
[FR Doc. 92-16735 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

#### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 18, 1992, a proposed Consent Decree in *United States of America v. Pacific American Asbestos Control Corporation*, was lodged with the United States District Court for the Eastern District of California.

The proposed Consent Decree resolves the United States' claims against Pacific American Asbestos Control Corporation ("Pacific American") under section 112(b) of the Clean Air Act, 42 U.S.C. 7412(b), as alleged in a complaint filed on May 17, 1991. The Complaint alleged Pacific American's violations of three different regulatory provisions of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, which is published at 40 CFR part 61 subpart M (1990). Under the proposed Consent Decree defendant Pacific American will pay a civil penalty to the United States of twenty-two thousand dollars and no cents (\$22,000) and agrees with the NESHAP for asbestos in the future.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Pacific American Asbestos Control Corporation*, DOJ Ref. No. 90-5-2-1-1511.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814, or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (tel.: (202) 347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of six dollars and fifty cents (\$6.50) (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section,  
Environment and Natural Resources Division.  
[FR Doc. 92-16733 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

#### Lodging of Consent Decree Pursuant to CERCLA

Notice is hereby given that a proposed consent decree in *United States v. U.T. Alexander et al.*, Civil Action No. G-86-267, was lodged on July 2, 1992 with the United States District Court for the Southern District of Texas.

The Complaint in this enforcement action was filed under sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, on July 18, 1986, against numerous generators and transporters in the Texas City, Texas area. It seeks injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of a hazardous substance from the Motco (formerly Petro Processors) site in Lamarque, Texas. The consent decree requires the six defendants, including Amoco Chemical Company, Amoco Production Company, Marathon Oil Company, Monsanto Company,

Quantum Chemical Corporation and Texas City Refining, Inc., to pay the United States \$314,652 in past response costs for the remediation of the MOTCO Site between April 1, 1986, and August 31, 1991.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. U.T. Alexander, et al.*, DOJ Ref. #90-11-3-74.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Texas 515 Rusk Avenue, Third Floor, Houston, Texas 77002; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General,  
Environment and Natural Resources Division.  
[FR Doc. 92-16736 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

#### Lodging of Consent Decree

In accordance the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on June 24, 1992, in *United States v. Western Kansas Asbestos Removal Inc.*, Civil Action No. 92-1334-K in the United States District Court for the District of Kansas, alleging that in August 1990, the defendant Western Kansas Asbestos Removal Inc. ("WKAR"), an asbestos removal contractor, failed to adequately wet friable asbestos material as it was being stripped or removed from the Minneola Elementary/High School in Minneola, Kansas, in violation of section 112 of the Clean Air Act ("the Act"), 42 U.S.C. 7412, and the National Emissions Standards for Hazardous Air pollutants for asbestos ("asbestos NESHAP"), 40 CFR 61.147(c). The complaint further alleged that defendant WKAR failed to

ensure that the friable asbestos material remained wet until collected for disposal and dropped asbestos-containing material on the work area in violation of the Act, 42 U.S.C. 7412, and the asbestos NESHAP, 40 CFR 61.147(e).

Contemporaneously with the filing of the complaint, a Consent Decree between the United States and defendant WKAR was lodged with the court. Under the terms of the proposed Consent Decree, the Defendant agrees to (a) obey all provisions of the asbestos NESHAP, 40 CFR part 61, subpart M, (b) develop and implement an Asbestos Control Program and complete Employee Training Requirements, (c) pay stipulated penalties for violations of the Consent Decree, and (d) pay the United States ten thousands dollars (\$10,000.00) in penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States v. Western Kansas Asbestos Removal Inc.*, Civil Action No. 92-1334-K, D.J. Ref. No. 90-5-2-1-1068.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

#### EPA Region VII

Contact: Julie Van Horn, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913) 551-7010.

United States Attorney's Office, United States Attorney, Civil Division, 1200 Epic Center, 301 North Main, Wichita, Kansas, 67202 (316) 269-6481.

Copies of the proposed Consent Decrees may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044, (202) 347-2072. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the Decrees, please enclose a check in the amount of \$3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,  
Chief, Environmental Enforcement Section,  
Environment and Natural Resources Division.  
[FR Doc. 92-16749 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-27,259]

#### Haight Enterprises, Forks, WA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 18, 1992, in response to a worker petition which was filed on May 18, 1992, on behalf of workers at Haight Enterprises, Forks, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of July, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-16784 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

#### Adjustment Assistance for Workers Impacted By a Proposed North American Free Trade Agreement

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of consultation; request for comments.

**SUMMARY:** During deliberations on the extension of Fast Track authority for negotiation of the proposed North American Free Trade Agreement (NAFTA) with Mexico and Canada, the Administration's position on a worker adjustment program to respond to potential dislocations resulting from NAFTA was developed and outlined in the President's May 1, 1991, Message to Congress. Although studies show that the proposed NAFTA will result in a net gain of jobs for U.S. workers, some workers will be adversely affected. The Administration is fully committed to a worker adjustment program that is adequately funded and that ensures that workers who may lose their jobs as a result of the agreement will receive prompt, comprehensive, and effective services. Worker adjustment services, whether provided through the improvement or expansion of an existing program or through the creation of a new program, should be targeted to provide dislocated workers with appropriate services in a timely manner. Further, the Administration is committed to working with the Congress to ensure that the objectives outlined above are met and adequately funded.

Any needed changes to U.S. law to implement such a program should be in place by the time the agreement enters into force and could appropriately be addressed in legislation implementing a NAFTA.

The Employment and Training Administration has begun the consultation process on a worker adjustment program, and as part of that process, has requested informed input from a variety of business, labor, and other interested parties. Responses from these parties will be used by the Administration as it works with the Congress to ensure that workers who may lose their jobs as a result of a North American Free Trade Agreement will receive prompt, comprehensive, and effective services. A copy of the letter being sent to these parties, and the Consultation Outline being used to guide the discussions, are published as attachments to this Notice. Individuals and organizations interested in providing input to the consultation process for the development of an adjustment program for workers impacted by a proposed NAFTA may use the Consultation Outline as a guide for their comments.

**DATES:** Comments should be submitted by July 31, 1992.

**ADDRESS:** Interested parties may submit comments to: Mr. James D. Van Erden, Administrator, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, room N-4649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Doug Holl.

**FOR FURTHER INFORMATION CONTACT:** Mr. James D. Van Erden, Administrator, Office of Work-Based Learning. Telephone: (202) 535-0540 (this is not a toll free number).

Signed at Washington, DC, this 10th day of July, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

#### Attachment A

July 1, 1992.

Dear:

During the discussions leading to Congressional extension of the Fast Track Agreement for the proposed North American Free Trade Agreement (NAFTA), the Administration committed to work with the Congress to ensure that there is adequate assistance and effective retraining for dislocated workers. Such a program, newly developed, would be adequately funded and designed to provide prompt, comprehensive, and effective services to workers impacted by the NAFTA. This program would be put in place when an agreement enters into force.

In order to develop a program that meets the desired goals, the Administration also agreed to carry out an extensive consultation process with the Congress, business, labor and other interested parties. Now that the framework of the proposed agreement is becoming clearer, the Department of Labor in conjunction with the United States Trade Representative has begun these consultations.

This process began in May and continues at this time with discussions with key Senate and House members and staff. We are now seeking additional input from many diverse organizations and interest groups that will help to further define the issues and possible program options.

I am asking for your input in this effort and for you to review the series of questions arrayed on the enclosed form. We would like your response within 15 days in order to ensure sufficient time for review. Should you have additional comments later, we would be glad to consider them if time allows. Thank you for your time.

Your response will help us develop a program that will assist impacted workers and allow them to successfully adapt to changes in the workforce as a result of the NAFTA.

Sincerely,

Roberts T. Jones,

Assistant Secretary of Labor.

Enclosure.

#### Attachment B—Consultation Outline North American Free Trade Agreement (NAFTA)

The Administration is committed to seeking broad input into the process to develop an adjustment program that can assist workers who may be adversely affected by a North American Free Trade Agreement. This Consultation Outline is designed to organize and guide the discussions around several key topics, and is being shared with a wide range of individuals and organizations. Comments regarding the issues identified under these topics will be factored into the Administration's ongoing consultation with the Congress. This is not a survey or a poll. The consultation process will not be served by focusing on the number or length of the responses, but your thoughtful insights and constructive comments to further the discussions on these important issues will be appreciated.

#### *I. Impact of a North American Free Trade Agreement*

A. What is your best estimate of the extent to which a Free Trade Agreement will result in worker dislocations?

B. How will the impacts of a Free Trade Agreement be differentiated by State or region? While States/areas will be most affected (e.g., border states and areas, urban areas, midwest industrial belt)?

C. How will the impacts of a Free Trade Agreement be differentiated by product, industry or sector? Which products, industries or sectors will be particularly affected?

1. Are any of the products, industries or sectors identified above already subject to significant structural adjustment and worker dislocations (stemming from competition, technological innovations, defense down-sizing, or other factors)?

2. Should particular industries or sectors be identified as "Adjustment Targets" for purposes of focusing worker assistance (e.g., industrywide certification)? Give pros and cons.

#### *II. Scope of an Adjustment Program*

A. Can or should this program address:

1. Only those dislocations caused by a Free Trade Agreement, or

2. Dislocations caused by a Free Trade Agreement and by future international economic integration, investment, and trade agreements, or

3. All dislocations caused by unfavorable trade balances, or

4. All dislocations resulting from legislative or federal decisions?

B. Can an effective adjustment program be designed when some or all of the potential impact may be several years in the future and spread out over several years? If so, how should it be constructed?

#### *III. Timing*

A. Can or should this program provide services in anticipation of impact by a Free Trade Agreement (i.e., prior to dislocation)? If so, under what conditions? How early?

1. For workers?

2. For firms?

3. For communities?

B. Should an adjustment program have provisions to avert layoffs that might be expected to occur as a result of a Free Trade Agreement? Under what conditions?

C. If different sectors are subject to different trade liberalization schedules under a Free Trade Agreement, should worker adjustment assistance be keyed in any way to those schedules?

D. Should worker adjustment assistance be available only during certain designated time periods on the assumption that Free Trade Agreement implementation schedules will be of particular significance during those periods?

#### *IV. Eligibility*

The Department of Labor currently administers two programs to help

workers who lose their jobs through no fault of their own.

The Trade Adjustment Assistance program provides adjustment assistance to workers who are adversely affected by increased imports. When a petition is submitted to the Department of Labor, a determination must be made that increased imports contributed importantly to decreased sales and production, leading to worker separations in a particular company. Affected workers are entitled to services and benefits, including income support while in approved training for up to 52 weeks following exhaustion of Unemployment Insurance benefits.

The Economic Dislocation and Worker Adjustment Assistance program authorizes retraining and readjustment services for workers who have been laid off or terminated and are unlikely to return to their previous industry or occupation, without regard to the cause of the dislocation. Enrollment decisions are based on local priorities; eligible workers are not automatically entitled to receive assistance. Funds are made available to the states and substate areas which have the primary responsibility for program design and the delivery of services based on local decisions.

A. Should the following be eligible for programs and benefits:

1. Workers who lose their jobs when companies move to Mexico?

2. Workers who lost their jobs as a result of increased imports from Mexico?

3. Workers who lose their jobs because their work has been shifted to non-American workers (e.g., U.S. Truck drivers displaced by Mexican truck drivers)?

4. Workers who lose their jobs because of a loss of export markets or market share to foreign competitors?

5. Firms that are impacted by loss of markets or market share?

6. Communities that suffer significant economic impact?

7. Spouses and other family members?

B. Should program benefits be available where impacts are direct, indirect, or community based? (i.e., only those companies that are directly affected; service and supplier sectors; other workers or firms in an impacted community; etc.)

1. How will the impact be linked with a Free Trade Agreement? (e.g., defined as "contributed importantly," "substantial cause," \* \* \*)

C. Should a time limit be set for establishing eligibility based on the impact of a Free Trade Agreement?

D. Should workers be eligible for adjustment assistance if imports from Mexico supplant supplies from other countries with little overall change in the level of imports?

E. Should program services be provided to impacted workers who are on non-permanent layoffs? Which services?

F. Should there be special provisions for workers near retirement? Should these provisions entail relaxed eligibility requirements, special services, extended duration of benefits, and/or other features?

G. Should a worker dislocated by a Free Trade Agreement be required to be proactive while receiving benefits? If so, what constitutes proactive? Should this requirement be subject to modification or waiver? If so, when?

H. Who makes eligibility determinations? (e.g., Federal entity as with Trade Adjustment Assistance petitions, State/local entity as for Economic Dislocation and Worker Adjustment Assistance programs, or other?)

1. What standards should govern this process (timeliness, appeal procedures, etc.)?

2. What immediate assistance, if any, should be provided while a determination is in process? Who should provide this assistance?

I. Should a Free Trade Agreement certification apply to all workers in a firm or plant if only a portion of the firm or plant is directly impacted by the Free Trade Agreement?

J. If sufficient data to make certifications are not available, should new data collection efforts be undertaken? How extensive should such efforts be? (e.g. should firms be required to disclose proprietary information related to such events as moving facilities to Mexico?)

#### V. Services and Benefits

A. What services do you consider most important for workers who are impacted by a Free Trade Agreement? (List in order of importance)

B. How are appropriate services determined? What mechanism should guide this process?

C. Should a U.S. adjustment assistance program in response to a Free Trade Agreement be conditioned on whether or not Canada/Mexico also provide for similar worker assistance? If so, should a trinational body set standards for the types and levels of assistance that might be provided workers affected by a Free Trade Agreement?

D. Are the important services unique to Free Trade Agreement related

impacts? If so, how would such services differ from those available under the Trade Adjustment Assistance program? under the Economic Dislocation and Worker Adjustment Assistance Program?

E. How should this adjustment assistance program link with existing programs (i.e., Trade Adjustment Assistance program, the Economic Dislocation and Worker Adjustment Assistance program, Employment Service activities, Unemployment Compensation program)? How should it link with existing forms of assistance available under other public and private programs such as Pell grants, employer-union training funds, etc.?

F. Should services be an entitlement for workers impacted by a Free Trade Agreement? Which workers?

G. Should affected workers automatically receive income support? (i.e., should income support be an entitlement? An option based on case-by-case decision?)

1. All affected workers?
2. Those on temporary lay-off?
3. Only those for whom suitable employment is not immediately available?
4. Only those enrolled in training?
5. Only those needing income support?
6. Those actively involved in seeking a new job?

H. What process should govern approval of support payments? How frequently should eligibility for payments be reviewed?

I. Should income support be an alternative or supplement to Unemployment Compensation or other entitlements? Or, be available only after other entitlements are exhausted?

J. Should there be a maximum benefit level? If so, should this level be set nationally? State by state? Locally?

1. What factors should be used to determine this level, and should the factors be determined on a local, State or national basis? (Possible factors: Average weekly wage, maximum weekly unemployment compensation benefit level, length of prior employment.)

K. Should there be a maximum duration for benefits payments? The same maximum duration for all participants?

L. What services are most important for firms that are impacted by a Free Trade Agreement?

1. Which of those services should be provided through Department of Labor (DOL) training and reemployment programs?

2. What other services should be provided through other Federal and State programs? How should these other

programs be linked with services for workers affected by a Free Trade Agreement?

M. How should Federal programs and services be linked with State services?

N. What services are most important for communities that are impacted by a Free Trade Agreement?

O. How can training and reemployment services for workers affected by a Free Trade Agreement support the adjustment process for communities?

P. Which other Federal and State programs and services are important for community adjustment? How should these programs be linked with a DOL program for workers impacted by a Free Trade Agreement?

Q. Who should be responsible for initiating action and overseeing delivery?

R. Who should actually provide services to workers, firms, and communities?

S. Should organized labor be involved in planning and delivery of services? Under what circumstances?

#### VI. Funding

A. How can an adequate level of funding be guaranteed for a program with potential delayed impact five or ten years hence? How can funds be provided to address events when and where they are needed?

1. How is the funding level to be estimated? What are the specific factors on which an estimate should be based?

2. Should funding be conditioned on actual impact of a Free Trade Agreement? Anticipated impact?

B. If the ultimate level of funding is insufficient to provide "full" services to all workers impacted by the Free Trade Agreement, how should services be limited?

1. Limit enrollment on the basis of need or other criteria?

2. Take in all eligible workers, but limit services? Which services?

3. First come, first served?

4. No limit on services, require supplemental appropriations?

C. To what extent, if any, should program beneficiaries (workers, firms, and/or communities) share the cost of an adjustment program? In particular, how should firms and communities contribute if the potential program outcome is financially advantageous?

#### VII. Performance and Oversight

A. What is (are) the program's goal(s) for affected workers? Provision of training, jobs, jobs that pay wages at a certain replacement level, job retention, or others?

B. How should we measure success in achieving these goals?

**VIII. Other Comments/Concerns/Information**

A. Please attach additional sheets to provide any additional comments.

B. Please indicate your affiliation:

1. Academia.
  2. Business.
  3. Labor Organization.
  4. Program Operator.
  5. Federal Government.
  6. State Government.
  7. Local Government.
  8. Other (Please specify).
- C. Your Name (optional).
- D. Name of Organization (optional).
- E. Phone Number (optional).

Thank you for your cooperation.

[FR Doc. 92-16785 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the

subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of July 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

**APPENDIX**

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Phillips Petroleum Co. (Wkrs)	Bartlesville, OK	07/06/92	06/23/92	27,451	Advanced Composites.
H & H Star Energy, Inc. (Wkrs)	Houston, TX	07/06/92	06/22/92	27,452	Oil, and Gas Exploration.
Welltech, Inc. (Wkrs)	Dickinson, ND	07/06/92	06/23/92	27,453	Oil Well Services.
Franks Casing Crew & Rental Tools (Wkrs)	Winnie, TX	07/06/92	05/15/92	27,454	Leasing Oil Rig Tools & Equipment.
Noble Drilling (US), Inc. (Wkrs)	Lafayette, LA	07/06/92	06/24/92	27,455	Oil Drilling.
Conoco, Inc., Oklahoma City Div. (Wkrs)	Oklahoma City, OK	07/06/92	06/18/92	27,456	Drill, Produce and Sell Oil and Gas.
Wilmer, Inc. (ILGWU)	Bowmanstown, PA	07/06/92	06/26/92	27,457	Ladies' Dresses.
Restech (Wkrs)	Houston, TX	07/06/92	06/24/92	27,458	Oil and Gas Consulting.
Trimfoot Co., (Co)	Potosi, MO	07/06/92	06/19/92	27,459	Children's Athletic Shoes & Dress Shoes.
Exxon Company USA (Wkrs)	Corpus Christi, TX	07/06/92	06/19/92	27,460	Gas Producers.
Transco Energy, Aviation Dept. (Wkrs)	Houston, TX	07/06/92	06/08/92	27,461	Natural Gas & Natural Gas Liquids.
Transco Energy Co. (Wkrs)	Houston, TX	07/06/92	06/08/92	27,462	Natural Gas & Natural Gas Liquids.
Clint Hurt Drilling, Inc. (Wkrs)	Midland, TX	07/06/92	06/04/92	27,463	Oil and Gas Drilling & Exploration.
Newfield Publications (Wkrs)	Columbus, OH	07/06/92	06/23/92	27,464	Packaging & Distribution of Publications.
Parker Hannifin, O-Ring Div. (Co.)	McAllen, TX	07/06/92	06/23/92	27,465	O-Rings.
General Electric Appliances (UAW)	Milwaukee, WI	07/06/92	06/25/92	27,466	Dishwashers and Trash Compactors.
Gallagher-Kaiser Corp. (SMW)	Detroit, MI	07/06/92	06/16/92	27,467	Paint Finishing Equipment.
Griffin, International (SMW)	Farmington, MI	07/06/92	06/16/92	27,468	Paint Finishing Equipment.
Haden-Schweitzer Corp. (SMW)	Madison Hts, MI	07/06/92	06/16/92	27,469	Paint Finishing Equipment.
A.B. Myr Sheet Metal Industries (SMW)	Belleville, MI	07/06/92	06/16/92	27,470	Paint Finishing Equipment.
Sheet Metal Industries, Inc. (SMW)	Milvndale, MI	07/06/92	06/16/92	27,471	Paint Finishing Equipment.
Tri-Mark Metal Corp. (SMW)	Detroit, MI	07/06/92	06/16/92	27,472	Sheet Metal Paint Finishing Equipment.
Venderbush Industrial (SMW)	Mt. Clemens, MI	07/06/92	06/16/92	27,473	Industrial Paint Finishing Equipment.
Performance Semiconductor Corp. (Co.)	Sunnyvale, CA	07/06/92	06/23/92	27,474	Semiconductors.
Trimfoot Co. (Co.)	Farmington, MO	07/06/92	06/19/92	27,475	Infant's & Children's Shoes.

[FR Doc. 92-16782 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,040]

**Vector Seismic Data Processing Co., Denver, CO; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the

Director of the Office of Trade Adjustment Assistance for workers at Vector Seismic Data Processing Co., Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,040; Vector Seismic Data Processing Co., Denver, Colorado (June 30, 1992).

Signed at Washington, DC this 9th day of July 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-16783 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

**Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

**ADDRESSES:** Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**  
Regarding the Attestation Process:

Chief, Division of Foreign Labor Certifications: U.S. Employment Service. Telephone: 202-535-0163 (this is not a toll-free number).

**Regarding the Complaint Process:**

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment

and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the

**ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the

**ADDRESSES** section of this notice.

Signed at Washington, DC., this 9th day of July 1992.

**Robert J. Litman,**

*Acting Director, United States Employment Service.*

## DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[06/01/92 to 06/30/92]

CEO—Name/Facility name/Address	State	Approval date
Jim Bushmaier, Stuttgart Memorial Hospital, P.O. Box 1905, Stuttgart, 72160, 501-673-3511	AR	06/26/92
Mary Harman Hams, St. Luke's Medical Center, 1800 E. Van Buren, Phoenix, 85006, 602-251-8400	AZ	06/12/92
Mr. Willis Bultje, Helena Regional Med. Ctr., P.O. Box 788, Helena, 72342, 501-338-5882	AZ	06/19/92
Mr. David A. Seely, Desert Hospital Corp., 1150 N. Indian Avenue, Palm Springs, 92262, 619-323-6287	CA	06/05/92
Mr. Solomon Goldner, Santa Anita Convalescent Hosp., 5522 Gracewood Avenue, Temple City, 91780, 818-579-0310	CA	06/05/92
Mr. Fred Manchur, San Joaquin Community Hosp., 2615 Eye Street, Bakersfield, 93301, 805-395-3000	CA	06/05/92
Mr. William L. Gilbert, Merced Community Med. Ctr., 301 E. 13th Street, Merced, 209-385-7114	CA	06/05/92
Mr. Dennis R. Bruns, South Bay Hospital, 514 N. Prospect, Redondo Beach, 90277, 310-376-9474	CA	06/05/92
Ms. Mary Williams, New Starts Homes, Inc., 9430 Topanga Canyon Blvd., Chatsworth, 91311, 818-341-5597	CA	06/09/92
Mr. Steve Schmidt, Lancaster Community Hospital, 43830 North 10th St. West, Lancaster, 93534, 805-948-4781	CA	06/09/92
Mr. Ed Scott, Los Angeles Community Hospital, 4081 East Olympic Blvd., Los Angeles, 90023, 213-267-0477	CA	06/09/92
Mr. A. Jason Geisinger, Hillhaven San Leandro, First Healthcare Corp., d.b.a., San Leandro, 94577, 510-357-4015	CA	06/09/92
Mr. Thomas G. Hennessy, Bay Harbor Hosp./Harbor Health Systems, Harbor City, 90710, 310-325-1221	CA	06/12/92
Ms. Sharon Bailey, Registered Nursing Services, 41773 Jennifer Avenue, Hemet, 92544, 714-925-9167	CA	06/12/92
Mr. Sean O'Neal, Delano Regional Med. Ctr., 1401 Garces Highway, Delano, 93216, 805-725-4800	CA	06/16/92
Ms. Makote Nakayama, San Gabriel Valley Med. Ctr., 218 South Santa Anita Street, San Gabriel, 91776, 818-570-6526	CA	06/16/92
Mr. A. Jason Geisinger, Pine Towers Convalescent Hosp., 2707 Pine Street, San Francisco, 94115, 415-563-7600	CA	06/16/92
Mr. David Levinsohn, Sherman Oaks Hosp. & Health C., 4929 Van Nuys Boulevard, Sherman Oaks, 91403, 818-981-7111	CA	06/16/92
Mr. Reggie Panis, Good Samaritan Hospital, 901 Olive Drive, Bakersfield, 93308, 805-399-4461	CA	06/19/92
Mr. John R. Cochran III, Martin Luther Hospital, 1830 Romneya, Anaheim, 92801, 714-491-5681	CA	06/26/92
Mr. A. Jason Geisinger, Bay Pointe Nursing Pavilion, First Healthcare Corp., d.b.a. St. Petersburg, 33712, 813-867-1104	FL	06/05/92
Mr. A. Jason Geisinger, Hillhaven Rehab. Ctr., First Healthcare Corp., d.b.a. Tampa, 33614, 813-872-2771	FL	06/05/92
Mr. A. Jason Geisinger, Conval. Ctr. of the Palm Beach, First Healthcare Corp., d.b.a. West Palm Beach, 33401, 407-832-6409	FL	06/05/92
Mr. Dyer Mitchell, Munroe Regional Med. Ctr., 131 S.W. 15th Street, Ocala, 32670, 904-351-7273	FL	06/05/92
Mr. A. Jason Geisinger, Hillhaven Conval. Ctr. of Sara, First Healthcare Corp., d.b.a. Sarasota, 34238, 813-922-8009	FL	06/05/92
Mr. A. Jason Geisinger, Boca Raton Conval. Ctr., First Healthcare Corp., d.b.a. Boca Raton, 33487, 407-391-5200	FL	06/05/92
Mr. Robert Scharmann, Abbey Delray South, 1717 Homewood Boulevard, Delray Beach, 33445, 407-272-9600	FL	06/09/92
Mr. Jay Weinstein, Miami Beach Community Hospital, 250 63rd Street, Miami Beach, 33141, 305-868-2780	FL	06/09/92
Mr. Frank V. Sacco, Memorial Hospital—Hollywood, 3501 Johnson Street, Hollywood, 33021, 305-987-2000	FL	06/12/92

## DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/92 to 06/30/92]

CEO—Name/Facility name/Address	State	Approval date
Mr. Frank V. Sacco, Memorial Hospital West, 703 N. Flamingo Road, Pembroke Pines, 33028, 305-985-3435	FL	06/12/92
Mr. A. Jason Geisinger, Hillhaven Convalescent Ctr., First Healthcare Corp., d.b.a. Delray Beach, 33484, 407-495-3188	FL	06/16/92
Mr. Arlen J. Reynolds, AMI/Palm Beach Gardens Med. C, 3360 Burns Rd., Palm Beach Gardens, 33410, 407-622-1411	FL	06/16/92
Mr. James Simon/Carol Rogers, Lower Florida Key Health Syte, 5900 West Jr. College Road, Key West, 33040, 305-294-5531	FL	06/19/92
Mr. Benjamin Everett, Sunnise Rehabilitation Hosp., Broward Health Corp., d.b.a. Fort Lauderdale, 33351, 305-749-0300	FL	06/23/92
Mr. A. Jason Geisinger, Hillhaven Healthcare Center, First Healthcare Corp., d.b.a. Sanford, 32771, 407-322-8566	FL	06/26/92
Mr. David Bussone, Tampa General Hospital, Davis Blvd., Davis Islands, 33606, 813-251-7483	FL	06/26/92
Mr. Jim Worm, Hialeah Hospital, a Not-For-P Versicare Medical Center, Hialeah, 33013, 305-693-6100	FL	06/26/92
Ms. Kathleen T. DuCasse, Miami Heart Institute, 4701 Meridian Avenue, Miami Beach, 33140, 305-672-1111	FL	06/26/92
Mr. Emil Miller, University General Hosp. of S. Community Health Systems, Inc., Seminole, 34648, 813-397-5511	FL	06/26/92
Mr. Myers R. Kurtz, Central State Hospital, P.O. Box, Milledgeville, 31062, 912-453-4128	GA	06/05/92
Mr. David L. Hill, Wahiawa General Hospital, 128 Lehua Street, Wahiawa, 96786, 808-621-8411	HI	06/26/92
Mr. W. Alan Stevenson, Wood River Medical Center, Sun Valley Road, Sun Valley, 83353, 208-622-3323	ID	06/05/92
Ms. Charlotte Kohn, Dobson Plaza, Inc., 120 Dodge, Evanston, 60202, 708-869-7744	IL	06/05/92
Sam Gorenstein, Metropolitan Nursing Center, Elmwood Park, Inc., Elmwood Park, 60635, 708-452-9200	IL	06/05/92
Ms. Joan Robinson Carl, Alden Mgmt. Services, Inc., 4200 West Peterson Avenue, Chicago, 60646, 312-286-3883	IL	06/12/92
Ms. Flora Steinberg, York Convalescent Center, 127 W. Diversey, Elmhurst, 60126, 708-530-5225	IL	06/12/92
Mr. Robert Hartman, Imperial Convalescent & Geria Ctr.—Claridge Imperial Ltd. d.b.a. Chicago, 60614, 312-935-7474	IL	06/12/92
Richard Schutt, Rest Haven West Christian N.C, 3450 Saratoga Avenue, Downers Grove, 60515, 708-969-2900	IL	06/22/92
Ms. Michelle Keen, Lake Cook Terrace Nursing Ctr., 222 Dennis Drive, Northbrook, 60062, 708-564-0505	IL	06/23/92
Ms. Lucille Engelsen, Pershing Convalescent Home, I, 3900 South Oak Park Avenue, Stickney, 60402, 708-484-7543	IL	06/26/92
Mr. Gary Grondin, North Central Dialysis Center, 55 East Washington Street, Chicago, 60602, 312-332-6892	IL	06/29/92
Mr. Maurice I. May, Hebrew Rehab. Center for Aged, Roslindale, 02131, 617-325-8000	MA	06/16/92
Mr. Ronald Marx, Leland Memorial Hospital, 4409 East/West Highway, Riverdale, 20737, 301-891-5652	MD	06/05/92
Mrs. Joan Finnerty, Suburban Hospital, Inc., 8600 Old Georgetown Rd., Bethesda, 20814, 301-530-2080	MD	06/05/92
Mr. Ronald R. Peterson, The Francis Scott Key Med. Ctr., 4940 Eastern Avenue, Baltimore, 21224, 410-550-0100	MD	06/26/92
Mr. A. Jason Geisinger, Bangor Convalescent C, First Healthcare Corp., d.b.a. Bangor, 04401, 207-947-6131	ME	06/23/92
Mr. Paul H. Wunderlich, St. Luke's Episcopal-Presbyte Hospital, Chesterfield, 63017, 314-434-1500	MO	06/16/92
Mr. A. Jason Geisinger, Hillhaven Rose Manor Conv. C, First Healthcare Corp., d.b.a. Durham, 27704, 919-477-9805	NC	06/05/92
Mr. A. Jason Geisinger, Hillhaven Conv. Ctr. of Chapel Hill, Chapel Hill, 27514, 919-967-1418	NC	06/05/92
Mr. Carl Underland, Voorhees Pediatric Facility, 1304 Laurel Oak Rd., Voorhees, 08043, 609-346-3300	NJ	06/12/92
Mr. Warren E. Gager, William B. Kessler Mem. Hosp., 600 S. White Horse Pike, Hammonton, 08037, 609-561-6700	NJ	06/12/92
Mr. William J. Monagle, Somerset Medical Center, 110 Rehill Avenue, Somerville, 08876, 908-685-2200	NJ	06/12/92
Ms. Natalie Zanetich-Fatigati, Hamilton Park Health Care Ctr., 525-535 Monmouth Street, Jersey City, 07302, 201-653-8800	NJ	06/16/92
Mr. Lowell Fein, Eagle Rock Convalescent Ctr., T/A West Caldwell Care Center, West Caldwell, 07006, 201-226-1100	NJ	06/23/92
Mr. Stephen Lazovitz, Lakewood of Voorhees Associat., 1302 Laurel Oak Road, Voorhees, 08043, 609-346-1200	NJ	06/23/92
Mr. John P. Ferguson, Hackensack Medical Ctr., 30 Prospect Avenue, Hackensack, 07601, 201-996-3601	NJ	06/26/92
Mr. Sam Solasz, Bialystoker Home & Infirmary the Aged, New York, 10002, 212-475-7755	NY	06/09/92
Mr. Gilbert Preira, Daughters of Jacob Geriatric, 1160 Teller Ave., Bronx, 10456, 212-293-1500	NY	06/09/92
Mr. Gary Horan, Our Lady of Mercy Med Ctr., 600 East 233rd Street, Bronx, 10466, 212-920-9000	NY	06/19/92
Mr. Arthur Wheeler, Windsor Employment Agency, In, One Cutter Mill Road, Great Neck, 11021, 516-487-2818	NY	06/19/92
Mr. Gary Horan, Our Lady of Mercy Med. Ctr., Pelham Bay Division, Bronx, 10461, 212-430-6000	NY	06/19/92
Mr. Alexander Hartman, Bainbridge Nursing Home, 3518 Bainbridge Avenue, Bronx, 10467, 212-655-1700	NY	06/23/92
Mr. Alexander Eartman, Wayne Nursing Home, 3530 Wayne Avenue, Bronx, 10467, 212-655-1700	NY	06/23/92
Ms. Marilyn J. Baader, Crouse Irving Memorial Hospit, 736 Irving Avenue, Syracuse, 13210, 315-470-7521	NY	06/26/92
Mr. John P. Ellis, Deaconess Hospital, 5501 North Portland, Oklahoma City, 73112, 405-946-5581	OK	06/26/92
Ms. Martha Jean Minniti, SNI Facilities Management, In, Flourtown Commons, Suite 112, Flourtown, 19031, 215-836-9000	PA	06/26/92
Ms. Clem P. Ham, Marion County Hospital District, P.O. Drawer 1150, Marion, Marion, 29571, 803-423-8590	SC	06/23/92
Mr. Kevin Hicks, Sun Towers Hospital, 1801 North Oregon, El Paso, 79902, 915-521-1200	TX	06/05/92
Mr. Doug Streckert, Valley Reg'l Med. Ctr., 1 Ted Hunt Blvd., Brownsville, 78521, 512-831-9611	TX	06/05/92
Mr. Bruce W. Reinhardt, Coronado Hospital, One Medical Plaza, Pampa, 79065, 806-665-3721	TX	06/12/92
Mr. Glen Marshall, Doctors Hospital LTD, 1984, 5815 Airline Dr., Houston, 77076, 713-695-6041	TX	06/12/92
Mr. Rex C. McRae, Randolph Memorial Hosp. Foundati, 800 West Randol Hill Road, Arlington, 76012, 817-548-6160	TX	06/19/92
Mr. Art Layne, Brownwood Regional Hospital, P.O. Box 760, Brownwood, 76804, 915-646-8541	TX	06/22/92
Mr. William A. Gregory, Diagnostic Center Hospital, 6447 Main, Houston, 77030, 713-790-0790	TX	06/23/92
Mr. Steven G. Kelly, Community Memorial Hospital, 125 Buena Vista Circle, South Hill, 23970, 804-447-3251	VA	06/12/92

Total Attestations: 85

[FR Doc. 92-16786 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-90-M

## Mine Safety and Health Administration

**Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions; Meeting**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** This notice provides the date, time, place and agenda summary for the fifth meeting of the Mine Safety and Health Administration's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances,

Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** Under sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the advisory committee will be held as follows:

August 3-5, 1992, from 8:00 a.m. until 4 p.m. at the Denver Marriott City Center (Denver Ballroom suite 1 and 2) located

at 1701 California Street, Denver, Colorado 80202.

The Secretary of Labor appointed this advisory committee to make recommendations on conditions under which belt entry air could be safely used in the face areas of underground coal mines.

The purpose of the meeting is to obtain information relative to: (1) The conditions under which belt haulage entries could be safely used as intake air courses to ventilate working places; (2) minimum velocities in conveyor belt haulageways; and (3) ventilation of escapeways.

The agenda for the fifth meeting will be the development of recommendations on conditions under which belt entry air could be safely used in the face areas of underground coal mines.

The public is invited to attend. During the meeting, the Chairperson will provide a half hour, twice each day, to allow interested persons to comment. Official records of the meeting will be available for public inspection at the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203.

Dated: July 9, 1992.

Patricia S. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-16661 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Presenting and Commissioning Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Panel A Section) to the National Council on the Arts will be held on August 4, 1992 from 9 a.m.—7 p.m., August 5-6 from 9 a.m.—6 p.m., and August 7 from 9 a.m.—5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 7 from 2 p.m.—5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on August 4 from 9 a.m.—7 p.m., August 5-6 from 9 a.m.—6 p.m., and August 7 from 9 a.m.—2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National

Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-16740 Filed 7-15-92; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 17, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, room 627,

Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Forhan at the above address or (202) 357-7817.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant:* G. A. McFeters, Department of Microbiology, Montana State University, Bozeman, MT 59717.

### Activity for Which Permit Requested

Introduction of nonindigenous species into Antarctica. The applicant requests permission to take three bacterial cultures and one Phage culture to McMurdo Station to be used in a study of enteric bacteria in the antarctic environment. These cultures would be carried to McMurdo Station in sealed containers, suitable for shipping through the mail, by J.P. Howington. At McMurdo Station they will be handled in a safe manner according to established microbiological techniques using aseptic technique and will not be released into the environment. Following the experiments and before our return to the U.S., the cultures will be killed by autoclaving in the laboratory at McMurdo Station.

### Location

McMurdo Station.

Dates: 08/22/92-01/15/93.

Guy Guthridge

Manager, Polar Information Program, Division of Polar Programs.

[FR Doc. 92-16828 Filed 7-15-92; 8:45 am]

BILLING CODE 7555-01-M

### Committee Management; Establishment

The Assistant Director for Computer and Information Science & Engineering has determined that the establishment of the Advisory Committee for

Computer and Information Science and Engineering (CISE), is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

**NAME OF COMMITTEE:** Advisory Committee for Computer and Information Science and Engineering (CISE)

**PURPOSE:** To provide advice, recommendations, and oversight to the Assistant Director (CISE) on matters relating to support of research, education, and infrastructure to facilitate policy deliberations, program development and management, and identification of disciplinary needs and areas of opportunity.

**BALANCED MEMBERSHIP PLAN:** The Advisory Committee for Computer and Information Science and Engineering will be composed of 15-20 leading scientists, engineers, and educators representing CISE disciplines. Members will be drawn from academia, industry, and appropriate governmental agencies to insure representation across disciplinary, geographic, institutional, and demographic lines. Consideration will be given to enhancing representation for women, minority, younger scientists, and scientists with disabilities.

**RESPONSIBLE NSF OFFICIAL:** Dr. A. Nico Habermann, Assistant Director, Computer and Information Science & Engineering, National Science Foundation, room 306, 1800 G Street, NW., Washington, DC 20550 (202) 357-7936.

Dated: July 13, 1992.

M. Rebecca Winkler,  
Committee Management Officer.

[FR Doc. 92-16721 Filed 7-15-92; 8:45 am]

BILLING CODE 7555-01-M

### Investigator Financial Disclosure Policy

**AGENCY:** National Science Foundation

**ACTION:** Notice of proposed changes to award conditions and proposal content.

**SUMMARY:** The National Science Foundation (NSF) proposes to issue revised award conditions and revised requirements for proposal submission in order to require limited and targeted disclosure of investigator financial interests and to deal with any conflicts of interests revealed.

**DATES:** The National Science Foundation will welcome any comments on the proposed policy. In order to be assured consideration comments must be postmarked no later than September 14, 1992.

**ADDRESSES:** Comments may be addressed to Miriam Leder, Assistant General Counsel, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Miriam Leder, 202-357-9435

**SUPPLEMENTARY INFORMATION:** The requirement that awardee institutions collect information on possible investigator conflicts of interests and submit such information to the Foundation has been approved by the Office of Information and Regulatory Affairs under Paperwork Reduction Act Control Number \_\_\_\_\_. The Foundation estimates that preparing the required disclosure will take 20 minutes for each investigator listed on a grant proposal. Comments on the validity of the estimate are invited. The time required to comply with the information collection requirement will vary from institution to institution depending on the amount of information an institution elects to obtain, the timing of its collection, and the degree to which an institution already collects such information.

The proposed changes would create an NSF policy related to conflicts of interests and financial disclosure by faculty members, investigators and professional employees at grantee institutions who are involved in NSF-funded research and educational activities. The policy is intended to ensure that institutions supported by NSF responsibly review financial ties of those faculty and staff to ensure that institutional resources, student work, and NSF support are directed to their intended scientific and educational ends.

NSF favors and has actively encouraged increased involvement of academic researchers and educators with industry and with private entrepreneurial ventures. However, such involvements create increased risk of conflict between the private interests of individuals, or of the companies with which they are involved, and the public interest that NSF funding should serve.

These risks have aroused concern in the scientific and engineering communities, in the public media, and in Congress, as well as at NSF. The proposed policy would respond to those concerns. Further, though NSF believes that significant conflicts of interests are rare in the work that NSF funds, we have no data by which to demonstrate

the point. The proposed policy would create a bank of data to serve as a reality check.

The proposed policy would have the following primary features:

A. A requirement that any NSF grantee employing more than fifty persons maintain "an appropriate written and enforced policy on conflict of interests". NSF intends to rely heavily on the policies and procedures of grantees to resolve conflicts issues.

B. Minimum requirements for what must be in an institution's policy. These include (a) limited and targeted financial disclosure by faculty and staff, (b) designation of persons to review the disclosures and resolve actual or potential problems revealed, (c) enforcement mechanisms, and (d) arrangements for informing research sponsors about problems and their resolution.

C. A requirement that with each proposal to NSF the applicant institution must indicate that the investigators have been required to disclose any significant financial ties they (or family or business associates) have with parties whose financial interests could be directly and significantly affected by the work to be funded. Any ties disclosed must be listed in an attachment to the proposal, which must also describe measures, if any, that would be taken to minimize risk of conflict of interests.

NSF particularly expects disclosure, and institutional review on which NSF can rely, where:

a. The proposed work would evaluate or further develop any commercial product or product line;

b. The research would have direct relevance to any off campus entrepreneurial venture (not the grantee) with which the investigator is involved; or

c. The research would have direct and immediate bearing on work the investigator does as a consultant.

D. A statement that financial ties revealed to NSF will not enter into NSF's evaluation of merit. The proposal attachment revealing such ties would be submitted to NSF in a sealed envelope, which would be opened only after merit review and only if the responsible NSF program has recommended an award. Only then would NSF consider any conflict-of-interests issues. It would separately determine whether an award should be made and, if so, what conditions, if any, should be placed in the award (or what arrangements, if any, should be made with the grantee or the principal investigator) to deal with any issues raised.

The following indicates the changes that would be made to NSF issuances to establish and communicate the proposed policy. Copies of the NSF Grant General Conditions and the NSF publication Grants for Research and Education in Science and Engineering may be obtained from the contact listed above. Copies of the NSF Grant Policy Manual may be obtained from the Government Printing Office.

#### What Would Be Required in Institutional Policies

##### Grant General Conditions

###### Insert a new paragraph 30:

If the grantee employs more than fifty persons, the grantee shall maintain an appropriate written and enforced policy on conflict of interests. See Grant Policy Manual \*310.

Renumber subsequent paragraphs accordingly.

##### Grant Policy Manual

In GPM 516.3 "Consulting and Other Outside Activities of Principal Investigators Under NSF Awards", add to subparagraph "a.":

However, see GPM 310 on Conflict of Interests Policies.

Strike all after subparagraph "a.", including Exhibits V-1 and V-2.

Add a new GPM 310 "Conflict of Interests Policies":

a. NSF requires each grantee employing more than fifty persons to maintain an appropriate written and enforced policy on conflict of interests. Guidance for such policies has been issued by university associations and scientific societies.\*

b. At minimum, an institutional conflict-of-interests policy should require that each faculty member or professional employee involved in NSF-funded research or educational activities disclose to a responsible representative of the institution:

- Any off-campus entrepreneurial venture or business (not the grantee) in which the individual is a principal;
- Any relevant consulting arrangement for pay or other employment for pay the individual has or expects to have with other organizations;
- Any significant financial ties with any firm or other entity that supplies or is likely to supply (other than by donation) equipment, materials, or services of significant value for work being performed at the institution by the individual or under the individual's direction;
- Any significant financial ties with, or research support from, any firm that markets, produces, or has in pre-market

testing a commercial product or product line that the individual's work is intended either to evaluate or to further develop; and

- Any other significant financial ties with parties whose financial interests would be, or to a reasonable observer familiar with the facts would seem to be, directly and significantly affected by research or other work to be performed by the individual.

The disclosed ties should include any that immediate family or close business associates have with such parties as well as the individual's own ties, but need not include routine small holdings of common stock or other corporate securities.

c. The institutional policy should designate one or more persons to review such disclosures and to resolve actual or potential conflicts problems they reveal. It should include adequate enforcement mechanisms and arrangements for keeping federal and other sponsors of research and educational activities at the institution appropriately informed of such problems and their resolution.

\* See On Preventing Conflicts of Interests in Government-Sponsored Research at Universities, a Joint Statement Of the Council of the American Association of University Professors and the American Council on Education (1964); Principles to Govern College and University Compensation Policies for Faculty Engaged in Sponsored Research, sponsored by the Association of American Universities, the American Council on Education, and the National Association of State Universities and Land-Grant Colleges (1978); and Managing Externally Funded Programs at Colleges and Universities, especially "Principle X. Research Ethics and Conflicts" issued by the Council on Government Relations (1989).

Renumber GPM 310-40 accordingly.

#### What Would Be Required in Proposals Grants for Research and Education in Science and Engineering

In Part I, Guidelines For Preparation of Proposals, right after "Project Description":

##### Disclosure

The applicant institution must indicate on the proposal cover sheet that the investigators have been required to disclose any significant financial ties they (or immediate family or close business associates of the investigators) have with parties whose financial interests would be, or to a reasonable observer familiar with the facts would seem to be, directly and significantly affected by the work to be funded and that any ties disclosed are listed in an attachment to the proposal.

In particular, NSF expects disclosure of:

- Any significant financial ties with, or research support from, a firm that markets, produces, or has in pre-market testing a commercial product or product line that the research being proposed is intended either to evaluate or to further develop;

- Any off-campus entrepreneurial venture or other business (not the grantee) with which an investigator has significant financial ties, if what is learned or accomplished in the research or other work being proposed is likely to have direct relevance to the business or operations of that venture or business; and

- Any employment of an investigator as a consultant or otherwise, if what is learned or accomplished in the research or other work being proposed is expected to bear directly on the work the investigator does or expects to do for the employing firm or industry.

- If such ties are disclosed, the attachment should specify any arrangements that have been made to safeguard against conflict of interests.

Such ties, if they exist, may be entirely proper, particularly given the proposed safeguards. NSF will not consider them in evaluating the scientific, technical, or educational merit of the proposal. NSF will, however, consider them subsequently in deciding whether to make an award and possibly in formulating conditions for such an award.

In Appendix II, "Checklist for Proposal Submission", add a new box labeled "Disclosure of ties with interested parties (See p. 4)" under the box labeled "Current and pending support".

Vicki De Hullu,

Legal Office Administrator.

[FR Doc. 92-16777 Filed 7-15-92; 8:45 am]

BILLING CODE 7555-01-M

#### Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**Date and Time:** August 3-4, 1992; 8:30 a.m. to 5 p.m.

**Place:** Room 543 (on August 3) and room 540 (on August 4), 1800 G Street, NW., Washington, DC.

**Type of Meeting:** Closed.

**Contact Person:** Dr. Merrell L. Patrick, NSF HPCC Coordinator, CISE, rm. 306, National Science Foundation, 1800 G St.,

NW., Washington, DC 20550. Telephone: (202) 357-7936.

**Purpose of Meeting:** To provide advice and recommendations concerning proposals submitted to NSF for financial support.

**Agenda:** To review and evaluate Grand Challenge Applications Group proposals as part of the selection process for awards.

**Reason for Closing:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-16804 Filed 7-15-92; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Science Resources Studies; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**Date and Time:** August 6, 1992; 9 a.m. to 5 p.m.

**Place:** Room 543, 1800 G Street NW., Washington, DC.

**Type of Meeting:** Open.

**Contact Person:** Dr. Ann Lanier, Project Director for the Survey of Scientific and Engineering Research Facilities at Universities and Colleges, Division of Science Resources Studies, rm. 609-L, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 634-4300.

**Minutes:** May be obtained from the contact person listed above.

**Purpose of Meeting:** To advise on the preparation of the congressionally mandated report, *Scientific and Engineering Research Facilities at Universities and Colleges: 1992*.

**Agenda:** To review the draft of the report and suggest additions and/or modifications that would improve the presentation of the data.

Dated: July 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-16805 Filed 7-15-92; 8:45 am]

BILLING CODE 7555-01-M

### NATIONAL TRANSPORTATION SAFETY BOARD

#### Public Hearing in Austin, Texas, on Pipeline Accident

In connection with the investigation of the explosion and fire involving a petroleum products pipeline in Brenham, Texas, on April 7, 1992, the National Transportation Safety Board will convene a 2-day public hearing at 9 a.m. (local time), on Wednesday, July 29, 1992, at the Omni Austin Hotel, 700 San Jacinto, Austin, Texas. For more information, contact Mike Benson, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594, telephone (202) 382-0660.

Dated: July 8, 1992.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 92-16702 Filed 7-15-92; 8:45 am]

BILLING CODE 7533-01-M

### NUCLEAR REGULATORY COMMISSION

#### Fuel Cycle Licensee Workshop

**AGENCY:** Nuclear Regulatory Commission

**ACTION:** Notice of workshop meeting with fuel cycle facility licensees.

**SUMMARY:** The Nuclear Regulatory Commission will sponsor a fuel cycle licensee workshop to bring together NRC officials and fuel cycle licensee representatives to discuss various NRC programs and policies and to aid in the management and implementation of safety programs at fuel cycle facilities.

**DATES:** Workshop will be sponsored on September 15, 1992, from 8 a.m. to 5 p.m. through September 17, 1992, from 8 a.m. to 12 p.m.

**ADDRESSES:** Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Office of Nuclear Material Safety and Safeguards (301) 504-2606 or Robert Wilson, Office of Nuclear Material Safety and Safeguards (301) 504-2126.

**SUPPLEMENTARY INFORMATION:** The workshop is designed to provide information on NRC policy and procedures applicable to fuel cycle licensees, develop an understanding of NRC program objectives, and provide an update on certain pending issues and policy matters. The workshop agenda will include such topics as integrated safety analyses, Bulletin 91-01, regulatory issues (NUREG-1324),

decommissioning, and lessons learned from events. Question and answer sessions will be held for each major topic.

Dated at Rockville, Maryland, this 8th day of July 1992.

For The Nuclear Regulatory Commission.

Jerry J. Swift,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92-16780 Filed 7-15-92; 8:45 am]

BILLING CODE 7590-01-M

### Maintenance Inspection Guidance Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will hold a public workshop to discuss revisions to a maintenance inspection procedure used by NRC inspectors during the interim period from the present until the implementation of the Maintenance Rule. The effective date of the Maintenance Rule (10 CFR 50.65) is July 1996.

**DATES:** Submit comments by August 25, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

The meeting will be held from 9 a.m.-5 p.m. on August 18, 1992, at Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852, telephone (301) 468-1100.

Persons planning to attend the workshop are requested to complete a registration form and sent it to Thomas Foley, M/S 10 A 19, U.S. Nuclear Regulatory Commission, Washington DC 20555 by August 3, 1992.

**ADDRESSES:** Send written comments to: David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, Washington, DC 20555, or hand deliver comments to 7920 Norfolk Avenue, Bethesda, MD between 7:45 a.m. and 4:15 p.m. on Federal workdays. The draft revision of the NRC Inspection Procedure IP 62703, "Monthly Maintenance Observation," and comments received, may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW., Washington DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Thomas Foley, Office of Nuclear Reactor Regulation, Washington, DC 20555, telephone (301) 504-1036.

**SUPPLEMENTARY INFORMATION:** NRC Inspection Procedure IP 62703, "Monthly Maintenance Observation," has been revised to provide additional clarification and guidance to NRC inspectors and to de-emphasize the process-oriented approach to regulation and inspection of maintenance activities. This change organizes the procedure for the inspector in a manner that will better emphasize the overall objectives of this transition.

The NRC believes that it would be beneficial to obtain public comment on this guidance from all interested parties, including special interest groups at a public workshop. The workshop will consist of an opening plenary session, break-out sessions, and a closing summary session.

During the plenary session the NRC representatives will discuss the general contents of the interim maintenance inspection procedure. This will be followed by the four parallel break-out sessions where attendees will have the opportunity ask questions about the inspection procedure, or to make comments or suggestions for improvement. The break-out sessions are intended to provide attendees a better opportunity to participate in the discussions and provide their input into the development of the maintenance inspection procedure. Both headquarters and region based NRC staff will attend each break-out session to provide a balanced perspective on inspection of maintenance activities. The workshop will conclude with a summary session where the issues discussed during break-out sessions will be summarized.

The topic of discussion will be Inspection Procedure (IP) 62703. Since this procedure has been extensively revised, attendees are free to review and comment on all aspects of the document. Comments on individual inspection elements (and sub-elements), and additional areas where clarification of the inspection guidance could be beneficial, are also requested. Some of the major revisions to the document include the following:

1. The inspection activities § 02.01 was reorganized in a manner that was intended better emphasize to inspectors the overall objective of viewing the individual inspection requirements as being part of a larger, results-oriented objective rather than as individual, process oriented elements each unto themselves. The change involved the grouping of the inspection requirements into three categories:

- a. Effectiveness of maintenance.
- b. Safety of personnel.
- c. Adequate control of plant risk.

2. The General Guidance section (page 3) was extensively revised. The section on Goals was enhanced to clarify that inspectors should concentrate on observation of significant inspection activities and should make use of Probabilistic Risk Assessment (PRA) data and risk-based inspection guides (RIGs) to help focus inspections. The section on inspection priorities was revised to emphasize inspection of maintenance activities rather than the program or procedures. The section on post maintenance testing was revised to emphasize the need for adequate testing prior to returning equipment to service. The section on shutdown risk was revised to emphasize the need for licensees to carefully plan and coordinate anticipate outages of equipment to preclude the possible loss of shutdown core cooling.

3. The Specific Guidance section (page 6) was also extensively revised. This section provides additional inspection guidance for some of the inspection activities in § 02.01 (page 1). Guidance regarding the use of vendor supplied technical information was added to section a.7. Guidance regarding the training and qualification of contractor personnel was added to section a.8. Guidance regarding the importance of engineering support, root cause analysis, and trending of maintenance data was added to section a.9. Guidance on voluntary entry into a technical specification limiting conditions for operation (LCOs) action statement to perform maintenance was added to section c.1.

The NRC staff intends to prepare new maintenance inspection procedures which will be used after July 10, 1996, to verify implementation of the maintenance rule. Applicable inspection elements from IP 62703 may be incorporated into the new inspection procedures if appropriate. However it is premature at this time to determine which specific elements will be incorporated into the new procedures. The NRC staff intends to monitor the industry efforts to implement the maintenance rule and participate in the planned verification and validation of the industry guideline document. The inspection procedures will be developed by January 1996. The staff plans to hold another workshop at that time to permit interested members of the public to comment on the proposed procedures. The staff also plans to perform pilot inspections at several sites during the period from January 1996 to July 1996 to validate the inspection procedures. These pilot inspections will be performed at sites that have (essentially) implemented the

maintenance rule. These pilot inspections will be performed for information only; no violations against the maintenance rule will be issued.

NRC management understands the importance of the continued oversight of maintenance activities and will afford it a high level of management attention during the interim period.

The public is asked to comment on the plans described above for the preparation of inspection procedures and performance of pilot inspections.

Dated at Bethesda, Maryland, this 10th day of July, 1992.

For the Nuclear Regulatory Commission.

**Thomas Foley,**

*Senior Operations Engineer, Performance and Quality Evaluation Branch, Division of Licensee Performance and Quality Evaluation, Office of Nuclear Reactor Regulation.*

**Registration Form United States Nuclear Regulatory Commission Maintenance Procedure Workshop August 18, 1992**

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Position \_\_\_\_\_  
Company/Organization \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Suggested Topics Related to "Monthly Maintenance Observation," IP 62703, to be Considered for Discussion:

Send Registration Form to: Thomas Foley,  
M/S 10 A19, US Nuclear Regulatory  
Commission, Washington, DC 20555.

[FR Doc. 92-16781 Filed 7-15-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027; Source Materials License No. SUB-1010]

**Sequoyah Fuels Corp.; Receipt of Petition for Director's Decision Under 10 CFR 2.206**

Notice is hereby give that by letter dated May 11, 1992, Diane Curran, Esq., on behalf of Native Americans for a Clean Environment (NACE), filed a "Request for Emergency Enforcement Action" (Petition) with the U.S. Nuclear Regulatory Commission staff for consideration as a petition under 10 CFR 2.206. The Petition requests the NRC to

immediately order Sequoyah Fuels Corporation (SFC) to stop transporting liquid raffinate fertilizer off the SFC site. The Petition seeks relief based on the following contentions: (1) The raffinate contains potentially toxic radionuclides and heavy metals and is also very caustic; (2) on May 4, 1992, when Mr. Manuel Alvarez was driving his truck on a public highway past one of SFC's properties known as the "Old Monsanto Ranch" where raffinate was being sprayed from a truck onto a pasture, Mr. Alvarez's face and arms were sprayed with raffinate that was carried by the wind through the open window of this truck, and as a result, Mr. Alvarez suffered second and third degree burns; (3) in at least three other instances, persons, animals, or vegetation have been injured by exposure to the raffinate.

Petitioner's request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. By letter dated July 7, 1992, the Director, Office of Nuclear Material Safety and Safeguards, acknowledged receipt of the Petition and described the investigation that the NRC staff had already initiated prior to knowledge that NACE was submitted a Petition. The NRC staff first learned of the alleged incident involving Mr. Alvarez on Sunday, May 10, 1992, at which time the staff observed his injuries and was informed that he already received medical treatment. On May 11, 1992, the NRC staff contacted SFC and Mr. Alvarez. SFC agreed to investigate the matter, and also agreed to provide medical evaluation to Mr. Alvarez to assess the nature and cause of his injuries. Mr. Alvarez initially agreed to medical followup to be arranged by SFC, but apparently changed his mind on May 12, declined SFC's offer, and declined to make medical records related to his injuries available to NRC. SFC confirmed its offer of medical assistance in writing to Mr. Alvarez on May 19, 1992. As of June 15, 1992, Mr. Alvarez had not responded to SFC's offer of medical evaluation, but he did provide the NRC staff with copies of medical records related to his injuries.

On May 20, 1992, SFC submitted a preliminary response to the Petition. SFC maintains that it is unlikely that the fertilizer being sprayed that day could have reached the highway where Mr. Alvarez alleges he was injured, and, even if so, it is unlikely that the fertilizer could have caused such injuries.

The Petition does not allege any violation of NRC requirements, and there does not appear to be any. While the NRC staff is still evaluating the

Petition, there is insufficient evidence at this time to conclude that Mr. Alvarez's injuries were caused by any SFC activity, or that there is a substantial public health hazard from SFC's use of raffinate fertilizer which would warrant the immediate enforcement action requested by the Petition. Therefore, the request for immediate action has been denied.

The NRC will take appropriate action on the Petition within a reasonable time. A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Dated at Rockville, Maryland, this 7th day of July 1992.

For the Nuclear Regulatory Commission,  
Robert M. Bernero,  
Director, Office of Nuclear Material Safety  
and Safeguards.

[FR Doc. 92-16779 Filed 7-15-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Resolution of Complaint of Price- Undercutting of Subsidized Cheese Imports

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice of Resolution of  
Complaint of Price-Undercutting of  
Subsidized Cheese Imports.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that the Government of Switzerland has provided the necessary assurances that the duty-paid wholesale price of imported industrial grade Swiss or Emmentaler cheese produced in Switzerland will not be less than the domestic wholesale market price of similar articles produced in the United States.

**FOR FURTHER INFORMATION CONTACT:**  
Jonathan Seiger, Senior Economist (202)  
395-3077, Office of the United States  
Trade Representative.

**SUPPLEMENTARY INFORMATION:** On June 18, 1992, The United States Trade Representative received a letter from the Secretary of Agriculture informing her of the Secretary's finding that subsidized imports of industrial grade Swiss or Emmentaler cheese produced in Switzerland were undercutting the wholesale price of Swiss cheese produced in the United States. During

the investigation period, the average domestic wholesale market price for similar Swiss cheese produced in the United States was \$1.56 per pound.

In accordance with section 702(c)(2) of the Trade Agreements Act of 1979 (the Act) (19 U.S.C. 1202 note), the Office of the United States Trade Representative notified the Government of Switzerland of the price undercutting determination made by the Secretary of Agriculture, requested that corrective action be taken, and asked for appropriate assurances concerning the commitments made in the Arrangement Between the United States and Switzerland Concerning Cheeses.

On July 7, 1992, the Government of Switzerland notified the United States Trade Representative that measures have been taken to ensure that the duty-paid wholesale price of imported Swiss or Emmentaler cheese produced in Switzerland will not be less than the domestic wholesale market price of similar cheese produced in the United States.

In addition, the Government of Switzerland gave assurance that it will respect the price commitments in the Arrangement. Since the above notification by the Government of Switzerland has occurred within the 15-day period provided in section 702(c)(3) of the Act, no further action is required pursuant to section 702.

Done at Washington, DC, this 10th day of July, 1992.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-16771 Filed 7-15-92; 8:45 am]

BILLING CODE 3190-01-M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Columbia River Basin Fish and Wildlife Power Plan Amendments

July 7, 1991.

**AGENCY:** Pacific Northwest Electric  
Power and Conservation Planning  
Council (Northwest Power Planning  
Council).

**ACTION:** Notice of extended comment  
period on proposed amendments to the  
Columbia River Basin Fish and Wildlife  
Program (measures for anadromous fish,  
phase 3).

**SUMMARY:** Pursuant to the Pacific  
Electric Power Planning and  
Conservation Act (the Northwest Power  
Act, 16 U.S.C. 839, et seq.) the Pacific  
Northwest Electric Power and  
Conservation Planning Council (Council)

has proposed amendments to the Columbia River Basin Fish and Wildlife Program (program). The amendments propose major changes to the salmon and steelhead provisions of the program. An earlier deadline for written comments is being amended.

**BACKGROUND:** The Council is in the third phase of a four-part process to amend the Columbia River Basin Fish and Wildlife Program (program). In an earlier notice, the Council called for written comment to be submitted by 5 p.m. Pacific time, July 9, 1992. This deadline is extended to 5 p.m. Pacific time, July 23, 1992.

**OPPORTUNITY FOR COMMENT:**

Commenters should submit written comments by 5 p.m. Pacific time on July 23, 1992. Comments should be clearly marked "Phase Three Comments," and submitted to the Council's Public Affairs Division, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204.

**FOR FURTHER INFORMATION:** For copies of the proposed amendments (request document no. 92-16), contact the Council's Public Affairs Division, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355.

Bobbe Fendall,  
Federal Register Liaison.

[FR Doc. 92-16747 Filed 7-15-92; 8:45 am]

BILLING CODE 0000-00-M

**Columbia River Basin Fish and Wildlife; Power Plan Amendments**

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of amended schedule for submitting recommendations to amend the Columbia River Basin Fish and Wildlife Program (resident fish and wildlife).

**SUMMARY:** Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has invited recommendations to amend the resident fish and wildlife provisions of the Columbia River Basin Fish and Wildlife Program (program). The deadline for written comments is being extended from 5 p.m. Pacific time, September 15, 1992, to November 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** For copies of the 1987 fish and wildlife, which contains existing resident fish measures (sections 207 and 900), or of

the Council's wildlife rule adopted in 1989 (request document 89-35) contact the Council's Public Affairs Division, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355. Recommendations may be submitted in letter form or the Council will supply amendment recommendation forms, on request. Amendment recommendations should be marked "Resident Fish and Wildlife Recommendation."

Edward W. Sheets,  
Executive Director.

[FR Doc. 92-16729 Filed 7-15-92; 8:45 am]

BILLING CODE 0000-00-M

**RAILROAD RETIREMENT BOARD**

**Agency Forms Submitted for OMB Review**

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Report of Medicaid State Office on, Beneficiary's Buy-In Status.

(2) *Form(s) submitted:* RL-380-F

(3) *OMB Number:* New Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New Collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* See justification (Item 13)

(9) *Total annual responses:* 600.

(10) *Average time per response:* .166 hours.

(11) *Total annual reporting hours:* 100.

(12) *Collection description:* Under the RRA, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance Program coverage under a State buy-in agreement in States in which they reside.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information

collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-16732 Filed 7-15-92; 8:45 am]

BILLING CODE 7905-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[International Series Release No. 414; File No. 265-16]

**Emerging Markets Advisory Committee; Renewal**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of renewal of the Emerging Markets Advisory Committee.

**SUMMARY:** The Chairman of the Commission, with the concurrence of other members of the Commission, has renewed the Emerging Markets Advisory Committee which advises the Commission on steps that should be taken by the Commission and the U.S. financial services industry to assist efforts to create organized securities markets in foreign countries, including those in Eastern Europe.

**DATES:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas Riesenber, Assistant General Counsel, (202) 504-2427, or Susan Nash, Senior Counsel, (202) 272-2070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations thereunder, the Commission has ordered publication of this notice that Chairman Richard C. Breeden, with the concurrence of other members of the Commission, has renewed for a two-year period an advisory committee, under the Federal Advisory Committee Act, which is designated the "Emerging Markets Advisory Committee." The Emerging Markets Advisory Committee advises the Commission on steps that should be taken by the Commission and the U.S. financial services industry to assist efforts to create organized securities markets in foreign countries, including those in Eastern Europe.

By the Commission.

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16874 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30906; International Series No. 415; File No. S7-8-90]

**Options Price Reporting Authority; Filing and Immediate Effectiveness of Amendment to the National Market System Plan of OPRA**

July 9, 1992.

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 15, 1992, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"), establishing a six-month pilot program whereby the Philadelphia Stock Exchange ("Phlx") will disseminate to vendors outside of the OPRA system implied volatility quotations on selected foreign currency options.

OPRA has designated this proposal as concerned solely with the administration of the plan, permitting it to become effective upon filing, pursuant to Rule 11Aa3-2(c)(3)(ii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

**I. Description and Purpose of the Amendment**

At the request of the Phlx, OPRA hereby requests approval of a six-month pilot program whereby Phlx will transmit directly to designated vendors of market information implied volatility quotations pertaining to selected at- and out-of-the-money foreign currency options traded on Phlx.<sup>1</sup> During this pilot, implied volatility quotations will not be transmitted over the OPRA system. OPRA treats this pilot as an amendment to the OPRA Plan for purposes of rule 11Aa3-2 under the Act, and has filed it with the Commission under the Rule.

The purpose of the amendment is to permit Phlx to accommodate those institutional investors in foreign currency options who desire to receive indications of the current state of the foreign currency options market

expressed in implied volatility quotations. These quotations will serve only as indications of the state of the market; actual trading in foreign currency options will continue to be conducted through bids and offers expressed in terms of the prices at which options may be bought or sold, and price quotations will continue to be disseminated over the OPRA system. Because the existing specifications of the OPRA system were not designed to accommodate implied volatility quotations, OPRA has consented to Phlx's arranging for the transmission of this information through selected vendors. During the term of the pilot program, OPRA anticipates making the necessary modifications to its system specifications to enable it to transmit implied volatility quotations for foreign currency options and perhaps other categories of options.

**II. Solicitation of Comments**

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7-8-90 and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16878 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30901; File No. SR-CBOE-92-12]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Modifications of Exchange Fees**

July 8, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Effective July 1, 1992, the CBOE proposes to modify certain fees, including, among others, market-maker transaction fees, finger printing charges, trade match service charges and various trading floor fees. Specifically, among other things, the CBOE proposes to (i) increase market-maker transaction fees for equities, Standard & Poor's ("S&P") 100 Index options ("OEX"), and S&P 500 Index options ("SPX") to \$0.05, \$0.06, and \$0.07 per contract, respectively; (ii) eliminate customer Retail Automatic Execution System ("RAES") fees for equities; (iii) increase certain trading floor charges, including charges for access badges, booth fees and telecommunications fees; (iv) increase the Exchange's inactive nominee status charge from \$50 to \$55 and raise the fingerprint processing and photograph fee from \$25 to \$35; and (b) impose a fee for electronic trade match reports. The text of the proposed fee exchanges is available at the office of the Secretary, CBOE and at the Commission.

<sup>1</sup> An "implied volatility quotation" is a measure of the volatility of the security underlying an option derived by solving a standard options valuation formula for the volatility factor at an assumed premium level.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### (1) Purpose

Effective July 1, 1992, the Exchange proposes to adjust certain fees to provide for an equitable distribution of costs associated with usage of the Exchange's services and facilities. Other than the elimination of the equity customer RAES fee (\$0.25 per contract), all adjustments affect members and/or member firms. The CBOE explains that, in most instances, the fee increases represent "cost-of-living" increases to charges that have not been adjusted for several years.

Accordingly, the CBOE has decided to increase such charges as market-maker transaction fees, membership fees for fingerprinting and inactive nominee status charges, as well as certain floor related charges for such matters as telecommunications services, booth rental, and access badges. In addition, the CBOE has decided to begin charging for electronic trade match reports. Until now, in an effort to encourage member firms to convert to electronic media, the CBOE has assessed no charges for electronic trade processing reports, which became available in 1988. The Exchange has continued to assess charges for "paper" reports. Currently, over 80% of the CBOE's clearing firms utilize electronic media. Therefore, in order to equalize the fees for trade processing services, the Exchange is modifying the charges for paper reports and instituting similar charges for electronic data.

The Exchange also is instituting a fee reduction plan which will reduce market-maker transaction fees and trade match fees when the Exchange's volume exceeds specified predetermined thresholds. Specifically, if Exchange volume exceeds a predetermined threshold at the end of any quarter on a year to date basis, transaction fees will

be reduced in the following quarter according to a schedule established by the Exchange. For example, if the Exchange's average daily contract volume on a year-to-date basis exceeds 535,000 contracts in one quarter, there will be a market maker fee reduction of \$.020 and a trade match fee reduction of \$.005 in the following quarter. All fees will be reset to their original levels at the beginning of each fiscal year regardless of volume in the preceding quarter, and the threshold for fee rebates will be reviewed by the Exchange each year.

#### (2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16795 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30904; File No. SR-Phlx-92-08]

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rules 803 and 805 To Establish Two-Tier Listing Standards for Common Stock

July 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rules 803 and 805 concerning listing and maintenance standards for equity securities to reflect the establishment of two-tier listing standards for common stock.<sup>1</sup>

<sup>1</sup> The text of the proposal was attached to the filing as Exhibit B. Copies are available at the Phlx and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Phlx proposes to establish two-tier standards for the listing of common stock. Specifically, the Phlx proposes to adopt as its "Tier I" listing standards the criteria established in connection with the North American Securities Administrators Association, Inc.'s ("NASAA")<sup>2</sup> Memorandum of Understanding ("MOU") on a uniform model marketplace exemption from state securities registration requirements for securities listed on the National Association of Securities Dealers, Inc. ("NASD") NASDAQ National Market System ("NASDAQ/NMS") and the national securities exchanges.<sup>3</sup> The Exchange will designate its current common stock listing standards in Exchange Rule 803 as its "Tier II" standards.<sup>4</sup>

The comparison of the Phlx's current common stock listing standards (Tier II standards), even as proposed to be revised, to the NASAA MOU standards (Tier I standards) shows that the latter, in most respects, reflect materially higher quantitative and nonquantitative (corporate governance requirements) criteria. Likewise, material differences

exist between the Tier I and current and proposed Tier II maintenance criteria for continued listing.

All equity securities, regardless of the standards utilized for their admissions to listing, will be traded pursuant to the identical Exchange auction rules. Securities listed pursuant to the Tier I and Tier II standards, however, may be distinguished with respect to blue sky exemptions, transaction reporting and listing fees, among others.

The Phlx states that two-tier listing standards will provide flexibility to the Phlx in pursuing various listing objectives. In the Phlx's view, such standards appear to have served well the NASD with respect to developing its NASDAQ list and NASDAQ/NMS Securities list. The Amex recently received Commission approval to adopt listing standards for its Emerging Company Marketplace ("ECM"), which *de facto* establishes a two-tier listing standards system for Amex common stocks.<sup>5</sup> In this regard, the Amex has indicated that small companies that may not meet Amex's regular listing standards could raise capital via a listing on the Amex's ECM.

While the Amex proposal introduces a reduced tier of common stock listing standards, the instant Phlx proposal would establish a set of higher tier listing standards.

The Phlx has proposed to adopt, as its new Tier I standards, NASAA's MOU standards because the Phlx views these standards to have been well thought out and crafted to provide an exceptionally high level of investor/shareholder protection. In this regard, the Phlx has proposed to adopt not only NASAA's quantitative financial listing standards, but also has proposed to adopt in entirety NASAA's substantial corporate governance standards, which include requirements for independent directors, audit committees, shareholder quorums, shareholder approval, common stock voting rights<sup>6</sup> and conflicts of interest provisions.

The Phlx believes that adoption of NASAA's standards also will foster greater uniformity in marketplace listing standards and will establish acceptable standards upon which further state "blue sky" registration exemptions may be sought by the Phlx and Phlx listed companies.

Regardless of whether an issuer lists its security pursuant to the Phlx's Tier I

or Tier II standards, all Exchange listed companies will be subject to filing annual and quarterly reports with the Phlx and the Commission, and will generally be held to the same corporate disclosure standards. Additionally, both Tier I and Tier II listings will be allocated to a specialist unit and will be subject to the same trading and market quotation rules. In this regard, the Phlx states that all listed securities will benefit from a regulated auction environment, subject to customer protection rules, short sale regulation and rigorous exchange market surveillance.

Finally, Tier I and Tier II securities will be eligible for order delivery and/or automated execution through the Phlx's Automated Communication and Execution System ("PACE"). PACE provides investors order execution guarantees at the Intermarket Trading System ("ITS") best bid or offer.

The Phlx will identify and distinguish at all times which securities were listed pursuant to the Tier I and Tier II standards. For example, Tier I securities will have the suffix ".TI" annexed to their ticker symbols. In addition, it is possible the closing prices in Tier I and Tier II securities will be carried in separate newspaper tables.<sup>7</sup> In this regard, if a Tier I listed security fails to satisfy Tier I maintenance standards for continued listing, the issue will be delisted. Thereafter, the issuer may seek to relist pursuant to the Exchange's Tier II standards. Moreover, if a Tier II listed security matures to the point that it could then meet the Tier I standards, the issuer must reapply and receive approval to list the security pursuant to the Tier I standards before the Exchange will deem such security to be a Tier I issue.

#### 2. Statutory Basis

The proposed rule change is consistent with the Act, particularly section 6(b)(5) in that the proposal fosters cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest. The Phlx also believes the

<sup>2</sup> NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

<sup>3</sup> The "MOU" which was approved by the NASAA membership on October 10, 1988 and published in Securities Exchange Act Release No. 6810 (December 16, 1988), 53 FR 52550, sets out criteria that must be met for a marketplace to receive the exemption, including numerical listing, corporate governance, voting rights, maintenance, decertification, and information sharing standards.

<sup>4</sup> Aside from this filing, the Exchange has pending before the Commission proposed revisions to its current common stock listing standards, among others, that would raise incrementally the level of those standards. See Securities Exchange Act Release No. 28358 (July 30, 1990), 55 FR 35228 (notice of filing of File No. SR-PHLX-90-07).

<sup>5</sup> See Securities Exchange Act Release No. 30445 (March 5, 1992), 57 FR 8693.

<sup>6</sup> The Phlx previously adopted a common stock voting rights listing standard rule that is substantially similar to the common stock voting rights policy in the MOU. See Phlx Rule 806.

<sup>7</sup> Conversation between Michele Weisbaum, Assistant General Counsel, Phlx, and Elizabeth Cosgrove, Attorney, SEC, on July 7, 1992 clarifying that the Exchange will use the suffixes, ".TI" for Tier I securities and ".TII" for Tier II securities annexed to the ticker symbols.

proposal is consistent with section 11A of the Act in that approval of the Tier I standards will aid in the development of the national market system by enhancing competition for equity listings.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

#### **III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-92-08 and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16675 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30905; International Series No. 416; File Nos. SR-PHLX-92-14 and SR-PHLX-92-15]

#### **Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to Reducing the Contract Size of Cross-Rate Foreign Currency Options and the Strike Price Intervals for Certain German Mark/Japanese Yen Cross-Rate Foreign Currency Options**

July 9, 1992.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes**

The PHLX hereby submits, pursuant to Rule 19b-4 of the Act, two proposed rule changes concerning cross-rate foreign currency options. First, in file SR-PHLX-92-14, the Exchange proposes to reduce the contract size of the three cross-rate foreign currency option contracts<sup>2</sup> that the Exchange currently is approved to trade.<sup>3</sup> Specifically,

<sup>1</sup> The Exchange filed SR-PHLX-92-14 and SR-PHLX-92-15 on April 15, 1992 and June 1, 1992, respectively.

<sup>2</sup> A cross-rate foreign currency option is an option to purchase or sell a foreign currency at an exercise price that is denominated in another foreign currency. The exercise price, therefore, represents an exchange rate between the two foreign currencies.

<sup>3</sup> On November 7, 1991, the Commission approved a PHLX proposal to list and trade three cross-rate foreign currency options. Specifically, the Commission approved the listing and trading of the German mark/Japanese yen ("DM/JY"), British pound/German mark ("BP/DM") and British pound/Japanese yen ("BP/JY") cross-rate options. At this time, however, the PHLX has only commenced trading in DM/JY cross-rate options. See Securities Exchange Act Release No. 29919 (November 1, 1991), 56 FR 58109 ("Cross-Rate Approval Order").

under the proposal, the contracts will be reduced to 1/16th of their current size. In conjunction with this reduction in contract size, the PHLX also proposes to increase position and exercise limits for cross-rate options consistent with the contract size reduction and to amend the minimum fractional change or "tick" of the BP/DM and BP/JY cross-rate foreign currency options contracts.

Second, in file SR-PHLX-92-15, the Exchange proposes to reduce the strike price interval for DM/JY contracts expiring in the first quarterly cycle month and the two near-term consecutive spot months. Specifically, the PHLX proposes to reduce the strike price interval from one Japanese yen to one half (.5) Japanese yen for these options series.

PHLX Rules 1001, 1002 and 1034 are the specific provisions to be amended by these proposals. The text of the proposed rule changes are available at the Office of the Secretary, PHLX, and at the Commission.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

The current contract size for the foreign currency cross-rate option contracts are: 1,000,000DM for the DM/JY; 500,000BP for the BP/JY; and 500,000BP for the BP/DM. The PHLX has determined, however, that a smaller contract size would better meet the needs of cross-rate foreign currency option market participants. Accordingly, the Exchange proposes to reduce by a factor of sixteen (1/16) the contract size of its cross-rate foreign currency options. Except for modifications to position and exercise limits, the minimal fractional change or "tick" size regarding the BP/DM and BP/JY contracts and the strike price intervals for DM/JY contracts, the contract size

reductions will be made without adjustment to strike prices, expirations or other material contract terms or rules.<sup>4</sup>

Specifically, the proposal calls for an increase in position and exercise limits for cross-rate options under PHLX Rules 1001 and 1002 from 7,500 contracts to 100,000 contracts,<sup>5</sup> and a minimum fractional change or "tick" modification from .0001 to .0002DM for DM/JY contracts and from .01 to .02JY for BP/JY contracts. In addition, in order to be competitive with other markets for DM/JY cross-rate currency products, the Exchange has proposed to reduce from one Japanese yen to one half (.5) Japanese yen the strike price interval for the three nearest term expiration months in DM/JY options.

The PHLX believes that the proposed rule changes are consistent with section 6(b)(5) of the Act in that they are designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule changes will impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others*

No written comments were either received or requested.

### **III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The Exchange has requested that the

proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).<sup>6</sup>

The Commission believes that the Exchange's proposal to list reduced-size cross-rate foreign currency options will facilitate transactions in these options by providing investors with a mechanism that will allow them to better tailor their cross-rate foreign currency options positions to satisfy their investment objectives. Moreover, even though the Commission has no reason to believe that the premiums associated with the reduced-size cross-rate options will be proportionately smaller (*i.e.* 1/16th smaller) than the premiums associated with the current "full" size contracts, the Commission would expect that options on the reduced-size cross-rate foreign currency options will have smaller options premiums that are more affordable to investors. In addition, such smaller premiums may provide investors with a lower cost means to hedge their portfolios against foreign currency risk.

The Commission also believes that the trading of reduced-size cross-rate foreign currency options will not have any adverse market impacts or be readily susceptible to manipulation. In this regard, as noted above, the Commission previously has approved the trading of options on cross-rate foreign currencies.<sup>7</sup> Accordingly, the Commission does not believe that merely changing the contract size of cross-rate options to 1/16th of their current size will make trading in the contracts readily susceptible to manipulation. Moreover, the Commission notes that the PHLX is actually decreasing its position and exercise limits for cross-rate options in conjunction with this filing.<sup>8</sup> Thus, the Commission believes that the proposed position and exercise limits are

reasonable and will serve to avoid trading abuse involving cross-rate foreign currency options.

In addition, the Commission finds that reducing the strike price intervals for DM/JY options in the three near-term expiration months is consistent with the Act because it will provide investors with greater flexibility to tailor their DM/JY positions to satisfy their investment objectives. In addition, based on representations from the Exchange, the Commission believes that narrower strike price intervals for DM/JY options will facilitate competition between the PHLX's currency options market and other foreign currency derivative markets. The Commission also notes that the proposed rule will not result in a proliferation of options series because it is limited to near-term DM/JY expiration months.

The Commission also finds that reducing the minimum fractional change or "tick" for reduced-size BP/DM and BP/JY cross-rate foreign currency options is reasonable because the new minimum ticks will correspond better to the minimum price fluctuations allowed for interbank foreign exchange price quotations.

Finally, based on representations from the PHLX, the Commission further believes that the Options Price Reporting Authority ("OPRA") will have sufficient capacity to adequately process quotations and trades in the reduced size cross-rate foreign currency options and accommodate the narrower strike price interval for DM/JY options. Specifically, the Exchange represents that "our systems and the OPRA lines will be more than adequate to accommodate the listing and trading of the split cross-rate currency options including the additional half point strike price intervals as proposed in [file] SR-PHLX-92-15."<sup>9</sup>

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register*. The PHLX proposal to reduce the contract size of cross-rate currency options is very similar to a proposal by the American Stock Exchange to reduce by one-half the size of the Major Market Index option which the Commission previously approved.<sup>10</sup> Therefore, the Commission believes the PHLX's proposal presents no new regulatory issues and that it is

<sup>9</sup> See letter from Murray L. Ross, Secretary, PHLX, to Jeffrey P. Burns, Attorney, Division of Market Regulation, SEC, dated July 7, 1992.

<sup>10</sup> See Securities Exchange Act Release No. 29798 (October 8, 1991), 56 FR 51956.

<sup>4</sup> On the date that the size of the DM/JY contract is reduced, outstanding positions in DM/JY options will be increased by a factor of 16. In this regard, the Exchange has distributed a circular to all of its options members, member organizations and foreign currency options participants explaining the cross-rate option split.

<sup>5</sup> The proposed increase in position and exercise limits for cross-rate options corresponds to existing position and exercise limits for U.S. dollar denominated foreign currency options. In addition, the proposed position and exercise limits for cross-rate foreign currency options are less than 16 times greater than the current position and exercise limits. Therefore, since the contracts will be 1/16th of their original size, the position and exercise limits for cross-rate options will be effectively smaller under the proposal.

<sup>6</sup> 15 U.S.C. 78f(b)(5) (1982).

<sup>7</sup> See Cross-Rate Options Approval Order, *supra* note 3.

<sup>8</sup> Even though the PHLX proposes to raise position and exercise limits to 100,000 contracts from 7,500 contracts, the 100,000 contract limit is less than 16 times the current limit of 7,500. Therefore, the total amount of underlying foreign currency that can be "controlled" under the new, higher limits is less than the current limits because the position and exercise limits are being increased in smaller proportion than the contract size is being decreased (*i.e.*, 1/16th).

appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can begin trading reduced-size cross-rate foreign currency options, which options will provide a lower cost hedge against foreign currency risk for the benefit of public investors. Moreover, with respect to the narrower strike price intervals for DM/JY options, the Commission believes it is appropriate to approve the proposal on an accelerated basis in order to facilitate the introduction of the reduced-size cross-rate options. In this regard, the Commission notes that the proposal is minor in nature and that it is limited to the three near-term expiration months. The Commission believes, therefore, that granting accelerated approval of the proposed rule changes is appropriate and consistent with Section 6 of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file numbers in the caption above and should be submitted by August 6, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule changes (SR-PHLX-92-14 and SR-PHLX-92-15) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16676 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30903; File No. SR-PHLX-92-16]

#### Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") Filed With the Securities and Exchange, Inc., Relating to the Filing of FOCUS Reports by Registered Options Traders

July 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1992, the Philadelphia Stock Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

##### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 703, "Financial Responsibility and Reporting," to (i) authorize a PHLX registered options trader ("ROTs") operating under a letter of guarantee from its clearing agent to file Financial and Operational Combined Uniform Single ("FOCUS") reports on a semiannual basis rather than a quarterly basis; and (ii) authorize the Exchange to require a member organization to file financial reports more frequently than currently required under its rules. The text of the proposal is available at the Office of the Secretary, PHLX and at the Commission.

##### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend paragraph (c) of Exchange Rule 703,

"Financial Responsibility and Reporting," to authorize ROTs operating under a letter of guarantee from their clearing agents to file FOCUS reports on a semiannual basis rather than a quarterly basis. The PHLX believes that the more limited FOCUS reporting is appropriate because the Exchange has come to rely more heavily on daily reports from these ROTs to monitor ongoing financial compliance. The PHLX notes, for example, that the current quarterly FOCUS reports provide less information than the daily statements filed with the Exchange's Examinations Department disclosing the equity in ROTs' trading accounts.

In addition, the PHLX proposes to amend paragraph (d) of Exchange Rule 703 to authorize the Exchange to require a member organization to file financial reports more frequently than currently required under its rules. For example, the PHLX states that a member firm might be subject to closer than normal surveillance based on the firm's equity level or excessive liabilities held outside of its clearing account. In that case, the PHLX may require that the member firm file reports more frequently than once each quarter.

The PHLX believes that the proposal is consistent with section 6(b)(5) of the Act in that it removes impediments to and perfects the mechanism of a free and open market, and because it fosters cooperation and coordination with persons engaged in regulating, facilitating and processing information with respect to transactions in securities.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

##### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

<sup>11</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>12</sup> 17 CFR 200.30-3(a)(12) (1991).

(A) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16677 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18841; 812-7912]

#### Seligman Capital Fund, Inc., et al., Notice of Application

July 10, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Seligman Capital Fund, Inc., Seligman Cash Management Fund, Inc., Seligman Common Stock Fund, Inc., Seligman Communications and Information Fund, Inc., Seligman Frontier Fund, Inc., Seligman Growth Fund, Inc., Seligman High Income Fund Series, Seligman Income Fund, Inc., Seligman International Fund Series, Inc., Seligman Mutual Benefit Portfolios, Inc., Seligman New Jersey Tax-Exempt Fund Series, Inc., Seligman Pennsylvania Tax-

Exempt Fund Series, Seligman Tax-Exempt Fund Series, Inc., Seligman Tax-Exempt Series Trust, and any existing or future registered investment companies that may become a member of the Seligman group of investment companies and whose shares may be distributed on substantially the same basis as the above named funds (the "Funds"); J.W. Seligman & Co. Incorporated (the "Adviser"); and Seligman Financial Services, Inc. (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order to permit the Funds to assess a contingent deferred sales charge ("CDSC") on redemptions of shares sold pursuant to a complete front-end sales load waiver applicable to large purchases, and to waive the CDSC in certain cases.

**FILING DATES:** The application was filed on April 27, 1992, and amended on June 10, 1992 and July 7, 1992. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 130 Liberty Street, New York, New York 10006.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application

may be obtained for a fee from the SEC's Public Reference Branch.

#### APPLICANTS' REPRESENTATIONS

1. The Funds are open-end management investment companies registered under the Act. All the Funds are organized as Maryland corporations, except Seligman Pennsylvania Tax-Exempt Fund Series, which is a Pennsylvania unincorporated trust, and Seligman High Income Fund Series and Seligman Tax-Exempt Series Trust, which are Massachusetts business trusts. The Adviser provides investment advisory services, and the Distributor acts as principal underwriter, to the Funds.

2. All shares of the Funds, except shares of Seligman Cash Management, Inc., Seligman International Fund Series, Inc., and Seligman Mutual Benefit Portfolios, Inc., are currently offered to the public at their net asset value plus a front-end sales load calculated as a percentage of the offering price at the time on sale.<sup>1</sup> The sales load is reduced as the aggregate dollar amount invested increases. Investors are allowed to combine current, past, and proposed purchases in certain circumstances to qualify for a greater reduction. Some of the Funds also impose service fees of up to .25% per annum of a Fund's average daily net assets pursuant to distribution plans adapted under rule 12b-1 of the Act.

3. Under the proposed CDSC arrangement, applicants will eliminate the front-end sales load on all future purchases of Fund shares larger than an amount specified in each Fund's prospectus. If such shares are redeemed within a period, to be established at the Funds' discretion, a CDSC will be imposed. No CDSC will be imposed on shares purchased prior to the date the Commission grants the requested order. The amount of the CDSC and the length of the CDSC period for each Fund will be disclosed in its prospectus. Any changes to the CDSC period or the CDSC amount will be disclosed in the affected Fund's prospectus. Any such change will not affect the shares of that Fund which were issued prior to the disclosure of such change in the prospectus. The CDSC will be deducted from the redemption proceeds otherwise

<sup>1</sup> Shares of Seligman Cash Management Fund, Inc., currently are offered to the public at net asset value without imposition of a sales charge. Shares of Seligman International Fund Series, Inc. currently are offered only to employees and advisory clients of the Adviser, and are sold at net asset value without imposition of a sales charge. Shares of Seligman Mutual Benefit Portfolios, Inc. are offered exclusively to an insurance company separate account, without imposition of a sales charge.

payable to the shareholder and will be retained by the Distributor to recover commissions paid on the sale of shares as well as promotional, service, and maintenance expenses associated with such sales.

4. The CDSC will be calculated as a specified percentage of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. No CDSC will be imposed on shares purchased through the reinvestment of dividends or capital gains distributions. In determining whether a CDSC is applicable, it will be assumed that a redemption is made, first, of shares not subject to the CDSC, and then in a manner that will result in the lowest CDSC being imposed at the time of redemption. No CDSC will be imposed on exchanges of Fund shares. No CDSC will apply to redemptions of Seligman Cash Management Fund, Inc. and Seligman International Series, Inc. unless such shares are acquired in exchange for shares of another Fund subject to a CDSC. In no event will a CDSC be imposed on redemptions of shares of Seligman Mutual Benefit Portfolios, Inc. If shares subject to a CDSC are exchanged for other shares which are subsequently redeemed during the CDSC period following the original investment, the applicable CDSC will be assessed on the acquired shares.

5. The CDSC will be waived or reduced in the following instances: (a) On redemptions following the death or disability of a shareholder, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"); (b) in connection with (i) distributions from retirement plans qualified under section 401(a) of the Code when such redemptions are necessary to make distributions to plan participants (such payments include, but are not limited to death, disability, retirement, or separation of service), (ii) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account (an "IRA") due to death, disability, or attainment of age 59 1/2 and (iii) a tax-free return of an excess contribution to an IRA; (c) in whole or in part, in connection with shares sold to current and retired Trustees or Directors of the Funds; (d) in whole or in part, in connection with shares sold to any state, county, or city or any instrumentality, department, authority, or agency thereof, which is prohibited by applicable investment laws from paying a sales load or commission in connection with the purchase of shares of any registered

investment management company; (e) pursuant to an automatic cash withdrawal service; (f) in connection with the redemption of shares of any Fund that is combined with another Fund, or another similar reorganization transaction; and (g) in connection with any Fund's right to redeem or liquidate an account that holds below a certain minimum number or dollar amount of shares.

6. The Distributor may provide a credit for any CDSC paid by a redeeming shareholder in connection with a redemption of shares of a Fund followed by a reinvestment in any Fund. To qualify for the credit, such reinvestment must be effected within a certain number of days, not to be fewer than thirty, specified in each Fund's prospectus. In the event the reinvestment credit period is subsequently shortened with respect to any Fund, a shareholder who invested prior to the time the period was shortened will be allowed a reinvestment credit for the longer reinvestment credit in effect at the time the shareholder purchased his or her shares.

#### APPLICANTS' LEGAL CONCLUSION:

Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Funds' shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

**APPLICANTS' CONDITION:** Applicants agree to the following express condition to the requested exemptive relief:

If the requested exemptive relief is granted, the applicants agree to comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as currently proposed and as it may be repropounded, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 92-16794 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of Reporting Requirements Submitted for Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted on or before August 17, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

#### FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo

Verbillis, Small Business

Administration, 409 3d Street, SW.,  
5th Floor, Washington, DC 20416,  
Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disclosure Statement.

SBA Form No.: SBA Form 856.

Frequency: Biannually.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 200.

Annual Burden: 200.

Dated: July 9, 1992.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 92-16699 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

#### [Declaration of Disaster Loan Area #3567]

#### Alaska; Declaration of Disaster Loan Area

The Fairbanks North Star Borough and the area within the Unorganized Borough along the Yukon River from the Canadian border to, and including, Galena constitute a disaster area as a result of damages caused by flooding beginning on May 12, 1992. Applications

for physical damage may be filed until the close of business on September 3, 1992 and for economic injury until the close of business on April 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations:

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	6.500
Businesses and non-profit organizations without credit available elsewhere.....	4.000
Others (including non-profit organizations) with credit available elsewhere.....	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 256706 and for economic injury the number is 765300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 1992.

Patricia Saiki,  
Administrator.

[FR Doc. 92-16690 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

#### [Declaration of Disaster Loan Area #2566]

#### California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 2, 1992, and an amendment also dated July 2, I find that the Counties of San Bernardino and Riverside in the State of California constitute a disaster area as a result of damages caused by earthquakes and continuing aftershocks which began on June 28, 1992. Applications for loans for physical damage may be filed until the close of business on September 3, 1992, and for loans for economic injury until the close of business on April 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, California 95853-4795 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Imperial, Inyo, Kern, Los Angeles, Orange, Riverside and San Diego in State of California, La Paz and Mohave in the State of Arizona, and Clark County in the State of Nevada

may be filed until the specified date at the above location.

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	6.500
Businesses and non-profit organizations without credit available elsewhere.....	4.000
Others (including non-profit organizations) with credit available elsewhere.....	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 256802 and for economic injury the numbers are 765400 for California, 765500 for Nevada, and 765600 for Arizona.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 7, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-16692 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

#### [Declaration of Disaster Loan Area #2566]

#### Connecticut; Declaration of Disaster Loan Area

New Haven County and the contiguous counties of Fairfield, Litchfield, Hartford and Middlesex in the State of Connecticut constitute a disaster area as a result of damages caused by heavy rains, winds, and severe flooding which occurred June 5-8, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Aug. 31, 1992, and for economic injury until the close of business on April 1, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd FL. Niagara Falls, NY 14303, or other locally announced locations

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	6.500
Businesses and non-profit organizations without credit available elsewhere.....	4.000

Others (including non-profit organizations) with credit available elsewhere...	Percent
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 256606 and for economic injury the number is 765200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 1, 1992.

Patricia Saiki,  
Administrator.

[FR Doc. 92-16691 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

#### [Declaration of Disaster Loan Area #2563]

#### Indiana; Declaration of Disaster Loan Area

Madison County and the contiguous counties of Delaware, Grant, Hamilton, Hancock, Henry, and Tipton in the State of Indiana constitute a disaster area as a result of damages caused by severe storms, heavy rains, and flooding which occurred in the City of Alexandria on June 17 and 18, 1992. Applications for loans for physical damage may be filed until the close of business on August 31, 1992, and for economic injury until the close of business on March 30, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308 or other locally announced locations:

The interest rates are:

For Physical Damage:	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	6.500
Businesses and non-profit organizations without credit available elsewhere.....	4.000
Others (including non-profit organizations) with credit available elsewhere.....	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 256306 and for economic injury the number is 764300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 30, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-16694 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2564]****Minnesota; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on June 26, 1992, I find that the Counties of Lac Qui Parle, Lyon, Murray, Redwood, Renville, Wright, Yellow Medicine, Chippewa, and Kandiyohi in the State of Minnesota constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes which occurred June 16-20, 1992. Applications for loans for physical damage may be filed until the close of business on August 26, 1992, and for loans for economic injury until the close of business on March 28, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Big Stone, Brown, Carver, Cottonwood, Hennepin, Jackson, Lincoln, McLeod, Meeker, Nicollet, Nobles, Pipestone, Pope, Rock, Sherburne, Sibley, Stearns, and Swift in the State of Minnesota and Deuel and Grant Counties in the State of South Dakota may be filed until the specified date at the above location.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere .....	Percent
Homeowners without credit available elsewhere .....	8.000
Businesses with credit available elsewhere .....	4.000
Businesses and non-profit organizations without credit available elsewhere .....	6.500
Others (including non-profit organizations) with credit available elsewhere .....	4.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	8.500
	4.000

The number assigned to this disaster for physical damage is 256412 and for economic injury the numbers are 764400 for Minnesota and 764500 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 30, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-16694 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2565]****South Dakota; Declaration of Disaster Loan Area**

Buffalo County and the contiguous counties of Brule, Hand, Hyde, Jerauld, and Lyman in the State of South Dakota constitute a disaster area as a result of damages caused by tornadoes, hail, and flash flooding which occurred June 13-18, 1992. Applications for loans for physical damage may be filed until the close of business on September 4, 1992, and for economic injury until the close of business on April 6, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere .....	Percent
Homeowners without credit available elsewhere .....	8.000
Businesses with credit available elsewhere .....	4.000
Businesses and non-profit organizations without credit available elsewhere .....	6.500
Others (including non-profit organizations) with credit available elsewhere .....	4.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	8.500
	4.000

The number assigned to this disaster for physical damage is 256512 and for economic injury the number is 765100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 6, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-16696 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2569]****Texas; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on July 2, 1992, I find that the Counties of Carson and Hutchinson in the State of Texas constitute a disaster area as a result of damages caused by severe

thunderstorms and tornadoes which occurred on June 27, 1992. Applications for loans for physical damage may be filed until the close of business on September 1, 1992, and for loans for economic injury until the close of business on April 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, Texas 76155 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Armstrong, Donley, Gray, Hansford, Moore, Ochiltree, Potter, Randall, Roberts, and Sherman may be filed until the specified date at the above location.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere .....	Percent
Homeowners without credit available elsewhere .....	8.000
Businesses with credit available elsewhere .....	4.000
Businesses and non-profit organizations without credit available elsewhere .....	6.500
Others (including non-profit organizations) with credit available elsewhere .....	4.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	8.500
	4.000

The number assigned to this disaster for physical damage is 256912 and for economic injury the number is 765700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 7, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-16695 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**Region I Advisory Council Meeting**

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Tuesday, September 15, 1992, at the Thomas P. O'Neill Federal Building, 10 Causeway Street, Conference Room 262, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph D. Pellegrino, District Director, U.S. Small Business Administration, 10 Causeway

Street, room 265, Boston, Massachusetts  
02222-1093, (617) 565-5560.

Dated: July 9, 1992.

**Caroline J. Beeson,**

*Assistant Administrator, Office of Advisory  
Councils.*

[FR Doc. 92-16697 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

### Region VI Advisory Council Meeting

The U.S. Small Business  
Administration Region VI Advisory  
Council, located in the geographical area  
of Albuquerque, will hold a public  
meeting at 9:30 a.m. on Tuesday,  
September 15, 1992, at 625 Silver SW.,

suite 320, Albuquerque, New Mexico, to  
discuss such matters as may be  
presented by members, staff of the U.S.  
Small Business Administration, or  
others present.

For further information, write or call Mr.  
Tom Dowell, District Director, U.S. Small  
Business Administration, 625 Silver SW.,  
suite 320, Albuquerque, New Mexico 87102,  
(505) 766-1856.

Dated: July 8, 1992.

**Caroline J. Beeson,**

*Assistant Administrator, Office of Advisory  
Councils.*

[FR Doc. 92-16698 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 99000069]

### CFB Venture Fund II, L.P.; Application for a Small Business Investment Company License

An application for a license to operate  
a Small Business Investment Company  
(SBIC) under the provisions of the Small  
Business Investment Act of 1958 (the  
Act), as amended, (15 U.S.C. 661 *et seq.*),  
has been filed by CFB Venture Fund II,  
L.P. (the Applicant), 11 South Meramec  
Ave., suite 800, St. Louis, MO 63105,  
with the Small Business Administration  
(SBA) pursuant to 13 CFR 107.102 (1992).

The proposed officers, directors and  
partners of the Applicant will be as  
follows:

Name	Title or position	Percent of ownership
<b>General Partner:</b>		
CFB Partners, Inc., 11 South Meramec Ave., Suite 800, St. Louis, MO 63105	General Partner	Wholly-owned subsidiary of Capital For Business, Inc.
James F. O'Donnell, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105	Chairman/Director	None
Bart S. Bergman, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105	President/Director	None
Stephen B. Broun, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105	Vice President/ Director	None
Nathaniel E. Sher, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105	Investment Officer/ Director	None
<b>Limited Partners:</b>		
Commerce Bancshares, Inc.	Limited Partner	50%

There will be a total of 60 partnership  
units in CFB Venture Fund II, L.P. Except  
for Commerce Bancshares, Inc. owning  
50% of the total Limited Partnership  
Units there will not be a single person or  
corporation that will own greater than  
10% of the total limited partnership  
units.

The Applicant, a Missouri partnership,  
is expected to begin operations with  
\$30,000,000 of private capital and will be  
a source of equity capital and long-term  
loan funds for qualified small business  
concerns. The Applicant intends to  
conduct its business activities in the  
State of Missouri, specifically the St.  
Louis and Kansas City metropolitan  
regions, and throughout the Midwest  
United States.

Matters involved in SBA's  
consideration of the Application include  
the general business reputation and  
character of the proposed owners and  
management, and the probability of  
successful operations of the existing  
company under their management  
including profitability and financial  
soundness in accordance with the Small  
Business Investment Act and the SBA  
Rules and Regulations.

Notice is further given that any person  
may, not later than 30 days from the  
date of publication of this notice, submit  
written comments on the proposed SBIC

to the Associate Administrator for  
Investment, Small Business  
Administration, 409 Third Street, SW.,  
Washington, DC 20416.

A copy of the notice shall be  
published in a newspaper of general  
circulation in St. Louis, Missouri.

(Catalog of Federal Domestic Assistance  
Program No. 59.011, Small Business  
Investment Companies)

Dated: July 9, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92-16701 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5369]

### Ibero-American Investors Corp.; Filing of Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Ibero-  
American Investors Corporation (Ibero),  
104 Scio Street, Rochester, New York  
14604, a Federal Licensee under the  
Small Business Investment Act of 1958,  
as amended (the Act), has applied to the  
Small Business Administration (SBA)  
pursuant to § 107.903(b) of the  
Regulations governing small business  
investment companies (13 CFR  
107.903(b) (1992)) for an exemption from  
the provisions of the cited Regulation.

Ibero is seeking SBA approval of a  
credit accommodation to Carmen  
Irizarry to finance the opening of a retail  
grocery store in Rochester's inner city.

The proposed financing is brought  
within the purview of § 107.903(b) of the  
Regulations because Ms. Irizarry is a  
sister of Ana Maria Rivera—a member  
of Ibero's Board of Directors, and is  
consequently considered an Associate  
of Ibero as defined in § 107.3 of the  
Regulations.

Notice is hereby given that any  
interested person may, not later than  
fifteen (15) days from the date of  
publication of this notice, submit written  
comments on the transaction to the  
Associate Administrator for Investment,  
Small Business Administration, 409  
Third Street, SW., Washington, DC  
20416.

A copy of this Notice will be  
published in a newspaper of general  
circulation in the Rochester, New York  
area.

(Catalog of Federal Domestic Assistance  
Program No. 59.011, Small Business  
Investment Companies)

Dated: July 9, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92-16700 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****Reports, Forms, and Recordkeeping Requirements**

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

**DATES:** July 9, 1992.

**ADDRESSES:** Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

**FOR FURTHER INFORMATION CONTACT:** Copies of the DOT information collection requests submitted to OMB may be obtained from John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

**SUPPLEMENTARY INFORMATION:****Background**

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

**Items Submitted for Review by OMB**

The following information collection requests were submitted to OMB on July 9, 1992:

DOT No. 3653.

OMB No. 2137-0522.

**Administration:** Research and Special Programs Administration.

**Title:** Incident and Annual Reports for Gas Pipeline Operators.

**Need for Information:** These reports are necessary to identify significant failures which may require investigation and to initiate corrective measures to prevent further damage or loss of life.

**Proposed Use of Information:** The information is used to determine if an operator has acted or is acting in compliance with the Natural Gas Pipeline Safety Act of 1968 and to prepare the annual report to Congress.

**Frequency:** On occasion for incident reports; once yearly for annual reports.

**Burden Estimate:** 6,670 hours.

**Respondents:** Pipeline operators.

**Form(s):** RSPA F 7100.1, F 7100.2, F 7100.1-1, and F 7100.2-1.

**Average Burden Hours Per Response:** 2 hours and 43 minutes.

DOT No. 3654.

OMB No. 2137-0018.

**Administration:** Research and Special Programs Administration.

**Title:** Portable Tank Inspection and Testing.

**Need for Information:** Ascertain whether portable tanks have been tested and/or retested in accordance with the Department's regulations.

**Proposed Use of Information:** To verify that portable tanks have not deteriorated due to age or physical abuse to a degree that would render the tanks unsafe for the transportation of hazardous materials.

**Frequency:** Approximately 2-5 years depending on the type of test and container.

**Burden Estimate:** 51,220 hours.

**Respondents:** Owners.

**Form(s):** None.

**Average Burden Hours Per Response:** 1 hour.

DOT No. 3655.

OMB No. 2137-0586.

**Administration:** Research and Special Programs Administration.

**Title:** Hazardous Materials Public Sector Planning and Training Grants.

**Need for Information:** Implementation of a reimbursable grant program to enhance existing State and local emergency response programs.

**Proposed Use of Information:** Grant program is to increase State and Indian tribal effectiveness in handling

accidents and incidents involving the transportation of hazardous materials.

**Frequency:** 3 years from the date grantee submits last expenditure request.

**Burden Estimate:** 4,082 hours.

**Respondents:** State and local governments (Indian Tribes).

**Form(s):** None.

**Average Burden Hours Per Response:** 68 hours.

DOT No. 3656.

OMB No. 2127-0539.

**Administration:** National Highway Traffic Safety Administration.

**Title:** 49 CFR Part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard.

**Need for Information:** To identify certain motor vehicles and their major replacement parts and to impede motor vehicle theft.

**Proposed Use of Information:** Manufacturers of passenger automobiles must identify new model introductions that are likely to be high-theft lines as defined in Title VI of the Motor Vehicle Information and Cost Savings Act.

**Frequency:** One-time only.

**Burden Estimate:** 2,720 hours.

**Respondents:** Vehicle manufacturers.

**Form(s):** None.

**Average Burden Hours Per Response:** 1 hour and 30 minutes.

DOT No. 3657.

OMB No. 2127-0042.

**Administration:** National Highway Traffic Safety Administration.

**Title:** 49 CFR Part 576, Record Retention.

**Need for Information:** To ensure records are kept by manufacturers for proper investigation of possible defects related to motor vehicle safety.

**Proposed Use of Information:** This regulation requires manufacturers to retain one copy of complaints, reports, and other records of malfunctions that may be related to motor vehicle safety. These records may be used to investigate possible defects and noncompliances.

**Frequency:** Recordkeeping.

**Burden Estimate:** 40,000 hours.

**Respondents:** Vehicle manufacturers.

**Form(s):** None.

**Average Burden Hours Per Response:** 1 hour and 30 minutes.

DOT No. 3658.

OMB No. 2130-0532.

**Administration:** Federal Railroad Administration.

**Title:** Railroad User Fees.

**Need for Information:** To determine a railroad's equitable share of the total industry user fee.

**Proposed Use of Information:** To assure that each railroad is assessed its fair share of the industry-wide user fee.

**Frequency:** Annually and recordkeeping.

**Burden Estimate:** 2,631 hours.

**Respondents:** Railroads.

**Form(s):** FRA-F-6180.90 and FRA-F-6180.91.

**Average Burden Hours Per Response:** 4 hours and 17 minutes.

**DOT No.** 3659.

**OMB No.** 2125-0541.

**Administration:** Federal Highway Administration.

**Title:** Certification of Enforcement of Heavy Vehicle Use Tax.

**Need for Information:** For FHWA to obtain certification from each State as proof of payment of the heavy vehicle use tax.

**Proposed Use of Information:** For each State to certify proof of payment of heavy vehicle use tax and to provide supporting records for each vehicle subject to the tax.

**Frequency:** Annually.

**Burden Estimate:** 612 hours.

**Respondents:** State highway agencies.

**Form(s):** None.

**Average Burden Hours Per Response:** 2 hours for reporting; 10 hours per recordkeeper.

**DOT No.** 3660.

**OMB No.** 2127-0558.

**Administration:** National Highway Traffic Safety Administration.

**Title:** Production Reporting System for Side Impact Protection Compliance, 49 CFR Part 586.

**Need for Information:** To determine the extent to which manufacturers are complying with the phase-in period.

**Proposed Use of Information:** Motor vehicle manufacturers are required to specify the percentage of passenger cars and their LTV's that are in compliance with the extension of FMVSS No. 214 and phase-in period for Part 586.

**Frequency:** Annually.

**Burden Estimate:** 1,320 hours.

**Respondents:** Vehicle manufacturers.

**Form(s):** None.

**Average Burden Hours Per Response:** 39 minutes.

**DOT No.** 3661.

**OMB No.** 2106-0005.

**Administration:** Office of the Secretary of Transportation.

**Title:** Title 14 CFR part 212, Charter Rules for U.S. and Foreign Direct Air Carriers.

**Need for Information:** Regulatory compliance.

**Proposed Use of Information:** To enable the Department to monitor and confer economic authority for U.S. and foreign air carriers to conduct

commercial charter services in international markets.

**Frequency:** On occasion.

**Burden Estimate:** 605 hours.

**Respondents:** Foreign air carriers.

**Form(s):** OST Form 4540.

**Average Burden Hours Per Response:** 22 minutes.

**DOT No.** 3662.

**OMB No.** 2115-0025.

**Administration:** U.S. Coast Guard.

**Title:** Oil Record Books for Ships.

**Need for Information:** This information collection is needed by the Coast Guard to ensure that the statutory requirements are met to prevent oil pollution from ships at sea.

**Proposed Use of Information:** Coast Guard will use this information to determine the level of compliance with MARPOL 73/78 and reinforce the discharge provisions. Actual recording of discharge information reinforces the intent of the regulation.

**Frequency:** On occasion.

**Burden Estimate:** 10,418 hours.

**Respondents:** Owners/operators of oceangoing vessels.

**Form(s):** CG 4602A.

**Average Burden Hours Per Response:** 2 hours and 30 minutes.

**DOT No.** 3663.

**OMB No.** 2115-0554.

**Administration:** U.S. Coast Guard.

**Title:** Advance Notice of Need for Reception Facilities.

**Need for Information:** This information collection is needed to ensure that the Coast Guard establishes regulations for determining the adequacy of reception facilities at ports and terminals. It will also be used to establish procedures whereby persons in charge of ports and terminals may request the Coast Guard to certify the adequacy of facilities. The reception facilities are needed to receive wastes which ships may not discharge at sea.

**Proposed Use of Information:** Coast Guard will use this information to determine when ships require reception facilities and to make such facilities available. This requirement is in lieu of requiring that terminals and personnel be available on a consistent basis.

**Frequency:** On occasion.

**Burden Estimate:** 1,256 hours.

**Respondents:** Terminal operators.

**Form(s):** None.

**Average Burden Hours Per Response:** 15 minutes.

Issued in Washington, DC on July 9, 1992.

**Cynthia C. Rand,**

*Director of Information Resource Management.*

[FR Doc. 92-16686 Filed 7-15-92; 8:45 am]

**BILLING CODE** 4910-62-M

## Federal Highway Administration

### Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Modification of notice.

**SUMMARY:** The FHWA is rescinding part of its March 6 notice in the *Federal Register* dealing with control of outdoor advertising, published on March 6, 1992, at 57 FR 8167. In addition, in the Regulations section of today's *Federal Register*, the FHWA is withdrawing a notice of proposed rulemaking (NPRM) published on May 8, 1992, at 57 FR 19824. Both the March 6 notice and the May 8 NPRM noted that the recently enacted Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended 23 U.S.C. 131 by making highway trust funds apportioned under 23 U.S.C. 104 available for the Federal share of just compensation to be paid to sign owners and landowners upon the removal of nonconforming signs. Consequently, the States were once again required to purchase nonconforming signs to comply with the Highway Beautification Act of 1965.

On June 22, 1992, however, the Congress further amended 23 U.S.C. 131(n), effectively giving the States the discretion as to whether to use highway funds for the removal of nonconforming signs. As a result, a portion of the March 6 notice and the NPRM no longer reflect current law, as there can be no binding guidelines or deadlines set by the FHWA for the States to follow. The relevant portion of the March 6 notice and the NPRM are therefore withdrawn.

**DATES:** Withdrawal of notice effective on June 22, 1992.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Roger Kezar, Chief, Policy Development Branch, Office of Right-of-Way, HRW-11, (202) 366-2021; or Mr. Robert J. Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** On March 6, 1992, the FHWA published a notice in the *Federal Register* entitled "Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising." The notice described the impact of section 1046 of the ISTEA, Public Law 102-240, 105 Stat. 1914, upon

the States' existing procedures for effective control of outdoor advertising, which were instituted in accord with regulations previously issued by the FHWA in 23 CFR 750.705. Section 1046(a) of the ISTEA amended 23 U.S.C. 131(m), making funds apportioned under 23 U.S.C. 104 available to participate in the cost of outdoor advertising control. By this amendment, highway trust funds were now available for the removal of nonconforming signs. In the notice, the FHWA stated that, as a consequence of the ISTEA making such funds available for participation, it believed the ISTEA required the States to begin immediate removal of nonconforming signs and to make reasonable progress in completing their removal expeditiously. The notice set a two year flexible goal for the removal of nonconforming signs and advised the States to submit plans for such removal by June 18, 1992. The notice also dealt with the removal of illegal signs and the prohibition of signs on scenic byways.

On May 8, 1992, the FHWA issued an NPRM to set forth criteria that the States should consider in developing their plans for the acquisition and removal of nonconforming signs. In addition, the FHWA wanted to establish a definite deadline for sign removal, with a procedure for extending the time limit if States were unable to meet it. Several options for implementing the removal of the remaining nonconforming signs were listed, and comments were solicited from all interested parties. As of this date, the FHWA has received numerous comments upon the options.

The need for the FHWA's rulemaking effort was obviated, when, on June 22, 1992, Public Law 102-302, 106 Stat. 248, was signed into law. Section 104 of Public Law 102-302 amended 23 U.S.C. 131(n), to make clear that while funds apportioned to a State under 23 U.S.C. 104 could be used for the acquisition costs of nonconforming signs, States are under no obligation to use such highway funds for nonconforming sign removal. Consequently, the May 8 NPRM, found at 57 FR 19824, which would have resulted in a rule requiring the establishment of a specific timetable for the removal of the remaining 92,000 nonconforming signs, is no longer appropriate and is withdrawn (see Regulations section of today's Federal Register).

In consideration of the foregoing, the March 6 notice, found at 57 FR 8167, is still in effect as regards the prohibition of signs on scenic byways and the removal of illegal signs. That part of the March 6 notice dealing with the removal

of nonconforming signs, however, is hereby rescinded. States are still required to maintain effective control of outdoor advertising pursuant to 23 CFR part 750, and those States deciding to use highway funds for nonconforming sign removal should give careful consideration to the recommended priority of removals found at 23 CFR 750.304(a).

(23 U.S.C. 131 and 315; Sec. 104 of Pub. L. 102-302, 106 Stat. 248)

Issued on: July 10, 1992.

T. D. Larson,  
Administrator.

[FR Doc. 92-16769 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-22-M

### National Highway Traffic Safety Administration

[Docket No. 88-06; Notice 20]

#### Federal Motor Vehicle Safety Standards; Side Impact Protection; Laboratory Test Procedure

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of availability.

**SUMMARY:** On August 16, 1991, NHTSA published in the Federal Register (56 FR 40937) a notice requesting public comments on a draft version of a Laboratory Test Procedure for use by contractors in testing vehicles for compliance with the side impact dynamic performance requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection*. The purpose of this notice is announce that the agency has placed in the public docket the final version of the Laboratory Test Procedure and the agency's response to the public comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey M. Giuseppe, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5756).

**SUPPLEMENTARY INFORMATION:** On August 16, 1991, NHTSA published in the Federal Register (56 FR 40937) a notice requesting public comments on a draft version of a Laboratory Test Procedure for use by contractors in testing vehicles for compliance with the side impact dynamic performance requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection*. The agency stated that it would consider any public comments

before adopting a final Laboratory Test Procedure.

NHTSA has now completed its review of the public comments and prepared the final version of the Laboratory Test Procedure. The final Laboratory Test Procedure (TP-214D-02) and the agency's response to the public comments have been filed in Docket 88-06, under Notice 12.

NHTSA notes that, as discussed in the August 1991 notice, it decided to request comments on the draft Laboratory Test Procedure for Standard No. 214 because of the unusual complexity of and public interest in issues involved with the test procedure. The agency observed that it ordinarily does not request public comments on Laboratory Test Procedures and emphasized that it did not intend to signal a general change in this practice. NHTSA may choose to adopt or change any Laboratory Test Procedure without allowing an opportunity for public comment.

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-16687 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-59-M

### Saint Lawrence Seaway Development Corporation

#### Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2 p.m., August 4, 1992, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than July 22, 1992, March C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on July 9, 1992.

**Marc C. Owen,**

*Advisory Board Liaison.*

[FR Doc. 92-16666 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-61-M

# Sunshine Act Meetings

Federal Register

Vol. 57, No. 137

Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## DEPARTMENT OF DEFENSE

### UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

#### Meeting Notice

**TIME AND DATE:** Full Board 8:00 a.m., August 19, 1992.

**PLACE:** Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

#### MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—May 15, 1992; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Associate Dean for Graduate Medical Education; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Reports of Subcommittees on Planning and Oversight; New Business.

#### CONTACT PERSON FOR MORE

**INFORMATION:** David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295-3886.

Dated: July 14, 1992.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-16951 Filed 7-14-92; 3:46 pm]

BILLING CODE 3810-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, July 14, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to probable failure of a certain insured bank.

Recommendation concerning an administrative enforcement proceeding.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818—Silverado Banking, Savings and Loan Association, Denver, Colorado

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550, 17th Street, N.W., Washington, D.C.

Dated: July 14, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-16948 Filed 7-14-92; 3:38 pm]

BILLING CODE 6714-0-M

## FEDERAL HOUSING FINANCE BOARD

**TIME AND DATE:** 10:00 a.m., Wednesday, July 22, 1992.

**PLACE:** Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

#### MATTERS TO BE CONSIDERED:

**PORTIONS OPEN TO THE PUBLIC:** The Board will consider the following:

1. Monthly Reports
  - A. District Banks Directorate
  - B. Housing Finance Directorate

**PORTIONS CLOSED TO THE PUBLIC:** The Board will consider the following:

1. Approval of the June Board Minutes
2. Mid-year Review of Agency's Priorities
3. Office of Strategic Planning Update
  - A. Strategic Plan
  - B. System Efficiencies Task Force
4. Examination & Regulatory Oversight Reports

## 5. Board Management Issues

The above matters are exempt under one or more of sections 552b(c) (2), (8), (9)(A) and (9)(B) of title 5 of the United States Code, 5 U.S.C. 552b(c) (2), (8), (9)(A) and (9)(B).

#### CONTACT PERSON FOR MORE

**INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92-16864 Filed 7-14-92; 4:44 pm]

BILLING CODE 6725-01-M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Wednesday, July 22, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

July 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-16945 Filed 7-14-92; 3:37 pm]

BILLING CODE 6210-01-M

## INTERSTATE COMMERCE COMMISSION

### Commission Conference

**TIME AND DATE:** 10:00 a.m., Tuesday, July 21, 1992.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

**STATUS:** The Commission will meet to discuss among themselves the following agenda item. Although the conference is open for the public observation, no public participation is permitted.

**MATTER TO BE DISCUSSED:**

FY 94 Budget.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

**Sidney L. Strickland, Jr.,**  
*Secretary.*

[FR Doc. 92-16886 Filed 7-14-92; 2:33 p.m.]

**BILLING CODE 7035-01-M**

# Corrections

Federal Register

Vol. 57, No. 137

Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 145 and 147

[Docket No. 91-026-1]

#### National Poultry Improvement Plan and Auxiliary Provisions

##### Correction

In proposed rule document 92-15232 beginning on page 29044 in the issue of Tuesday, June 30, 1992, make the following corrections:

1. On page 29044, in the 3rd column, in the 6th full paragraph, in the 7th line, insert "industry" after "poultry"; and in the 11th line, "§ § 145.1" should read "§ 145.1".

2. On page 29045, in the second column, in the first paragraph, in the fourth line from the bottom, insert "period" after "incubation".

##### § 145.4 [Corrected]

3. On page 29048, in the first column, in § 145.4(d), in the fourth line, "for" should read "from".

##### § 145.33 [Corrected]

4. On the same page, in the third column, in § 145.33(d)(10)(vii), in the fourth line, "30 days" should read "90 days".

5. On page 29049, in the first column, in amendatory instruction 15, in the first line "145.23" should read "145.53".

##### § 147.11 [Corrected]

6. On the same page, in the third column, in § 147.11, in the fourth line, insert "(b)" before "Bacteriologic examination of environmental and other contaminated specimens."

##### § 147.12 [Corrected]

7. On page 29050, in the first column, in § 147.12(c)(2), in the last line, "milk 1" should read "milk 1".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 672 and 675

[Docket No. 920531-2131]

RIN 0648-AD76

#### Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

##### Correction

In proposed rule document 92-12353 beginning on page 22695 in the issue of Friday, May 29, 1992, make the following corrections:

1. On page 22697, in the 1st column, under Establish FMP \* \* \*, in the 1st paragraph, in the 12th line, "§ 675.29" should read "§ 657.20".

2. On page 22698, in the third column, in the eighth line from the bottom, "yellowfish" should read "yellowfin".

3. On page 22699, in the 1st column, in the 11th line from the bottom, "CSAI" should read "BSAI".

4. On the same page, in the third column, in the first paragraph, in the fifth line, "increase" should read "increases".

5. On page 22700, in the second column, in the first full paragraph, in the seventh line, "ensure" should read "ensue".

6. On the same page, in the third column, in the eighth line from the top, "ensuring" should read "ensuing".

##### § 672.22 [Corrected]

7. On page 22703, in the second column, in § 672.22(a)(1)(iv), in the last line, "ground fish" should read "groundfish"; and in paragraph (a)(2)(i), in the second line, "stick" should read "stock".

##### § 672.26 [Corrected]

8. On page 22704, in the second column, in § 672.26(b)(1), in the second line, remove "a".

##### § 675.26 [Corrected]

9. On page 22706, in the third column, in § 675.26(d)(3)(i)(A)(2), beginning in the fourth line, remove the phrase "based on the round weight equivalent of the retained groundfish" the first time it appears.

10. On the same page, in the same column, in § 675.26(d)(3)(i)(C), in the

fifth line from the bottom, insert "reporting periods in which the vessel was assigned to that fishery" after "weekly"; and in the last line, insert a period after "periods".

BILLING CODE 1505-01-D

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 145

#### Commission Eastern Regional Office; Change of Address

##### Correction

In rule document 92-15309 appearing on page 29203 in the issue of Wednesday, July 1, 1992, in the third column, in amendatory instruction 5, in the second line, "(b)" should read "(g)".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 89-16-18; Notice 6]

RIN 2127-AD75

#### Federal Motor Vehicle Safety Standards; Glazing Materials

##### Correction

In rule document 92-15868 beginning on page 30161 in the issue of Wednesday, July 8, 1992, make the following corrections:

1. On page 30161, in the third column, in the eighth line from the top, "of" the first time it appears should read "or".

2. On page 30163, in the first column, in the second full paragraph, in the last line, "rationable" should read "rationale".

3. On the same page, in the third column, in the third paragraph, in the fifth line from the bottom, "Text" should read "Test".

##### § 571.205 [Corrected]

4. On page 30164, in the third column, in § 571.205, in S5.1.2.6, in the fifth line, after "4," insert "6,"; and in S5.1.2.10, at the end of paragraph (a), insert " \* \* \*".

BILLING CODE 1505-01-D

The report of the Secretary of the  
Department of Agriculture, for the  
year ending June 30, 1900, is  
presented in this report. It contains  
a full and complete statement of  
the work of the Department during  
the year, and a statement of the  
condition of the various branches  
of the Department at the close of  
the year.

DEPARTMENT OF AGRICULTURE

Report of the Secretary of the  
Department of Agriculture, for the  
year ending June 30, 1900.

Presented to the Senate and  
House of Representatives, at the  
second session, 1900.

By the Secretary of the  
Department of Agriculture.

WASHINGTON: GOVERNMENT  
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By the Secretary of the  
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# **federal register**

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**Thursday  
July 16, 1992**

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## **Part II**

## **Department of Labor**

**Employment Standards Administration  
Wage and Hour Division**

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**41 CFR Part 50-201**

**General Regulations Under the Walsh-  
Healey Public Contracts Act; Final Rule**

**DEPARTMENT OF LABOR****Employment Standards Administration  
Wage and Hour Division****41 CFR Part 50-201**

RIN 1215-AA33

**General Regulations Under the Walsh-Healey Public Contracts Act****AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.**ACTION:** Final rule.

**SUMMARY:** The Department of Labor (Department or DOL) is amending the Walsh-Healey Public Contracts Act (PCA) regulations to provide an alternative regular dealer definition for "information systems integrators," firms that contract to provide fully operational information processing ("ADP") systems to the Federal Government. This alternative definition is being promulgated in order to alleviate Federal procurement problems and to encourage more competition for Federal contracts.

**EFFECTIVE DATE:** August 17, 1992.**FOR FURTHER INFORMATION CONTACT:**

Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8305. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Walsh-Healey Public Contracts Act (PCA) provides labor standards for employees working on Federal contracts over \$10,000 calling for the manufacture or furnishing of materials, supplies, articles, or equipment. Section 1(a) of PCA provides that contracts subject to the Act may only be awarded to a manufacturer of, or a regular dealer in, the materials, supplies, articles, or equipment to be furnished under the contract. As defined in regulations, a "manufacturer" is "a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications." A "regular dealer" is "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract are bought, kept in stock, and sold to the public in the usual course of business" (41 CFR

50-201.101(a) (1) and (2)). As provided in 41 CFR 50-206.53(b)(2), the stock maintained by a regular dealer must be "a true inventory from which sales are made."

In some situations the standard definitions do not accommodate the Government's needs and a particular industry's practices, and the statute and regulations allow for exceptions to be made in such cases when the Government's operations would be seriously impaired. In addition to a number of full and partial administrative exemptions from the eligibility requirements that have been adopted for certain types of contracts (see 41 CFR 50-201.603 and .604), special alternative definitions have been granted over the years for regular dealers in eleven particular products (including one for the procurement of used automatic data processing equipment), in order to recognize commercial practices existing in those industries (see 41 CFR 50-201.101(a)(2) (i) through (xi)). Common to all of these alternative definitions is the absence of a requirement that the dealer physically maintain a stock from which sales are made.

On June 22, 1989, DOL published in the Federal Register (54 FR 28212) a proposed alternative regular dealer definition for "information systems integrators," intending to amend the PCA regulations by adding a new subparagraph (a)(2)(xii) to 41 CFR 50-201.101 containing the new definition. In addition to establishing alternative qualifications for eligibility for a defined class of contracts, the special definition proposed to permit qualifying contractors in this industry to satisfy the statutory requirements without having to physically maintain a stock of inventory from which sales are made. The maintenance of physical inventory appeared to be inconsistent with this industry's practices. The proposed definition resulted from information furnished by representatives of contracting agencies and the industry indicating that information systems integrators play a crucial role in the economic and efficient acquisition of information processing resources by Federal agencies, and that uncertainty as to their eligibility under PCA could hamper agencies' operational capabilities that depend heavily on the performance of advanced technology computer systems.

Two favorable comments were received on the proposal during the initial comment period. In November 1989, the Subcommittee on Legislation and National Security of the Committee on Government Operations, U.S. House of Representatives, began a series of

hearings on the Federal Government's purchase of ADP equipment, which included a review of some procurements awarded to systems integrators. The Department presented testimony at those hearings. Based on information brought out at the hearings and the fact that only two comments were received, the Department decided to reopen the comment period (to ensure an adequate rulemaking record) and to consider relevant information developed from the hearings in reaching decisions on formulating a final rule in the matter.

On November 27, 1990, the House Government Operations Committee ordered the printing of H.R. Rep. No. 101-987, 101st Cong., 2d Sess. (1990), entitled Acquisition of ADP Equipment—Questionable Practices by the Navy, Its Employees, the General Services Administration and IBM. The Committee recommendations include the following passage pertaining to the Department of Labor and its PCA rulemaking activities for "information systems integrators:"

\*\*\* e. The Committee continues to be concerned that the Walsh-Healey Act is being violated or circumvented by 'system integrators' that may not be eligible for contract awards under the Act as manufacturers or regular dealers. This situation is especially acute in the area of ADP procurement, where it is commonplace for a number of 'integrators' to offer identical equipment manufactured by the same manufacturer. It is clear that what results from these circumstances is not 'competition' as required by the Competition in Contracting Act. However, the Committee recognizes that bona fide systems integration contracts, which provide the government with substantial value added services, can improve the efficiency and effectiveness of Federal information resources management. Therefore, the Committee urges the Department of Labor to clarify the eligibility of systems integrators under the Walsh-Healey Act as soon as possible, in a manner that closes the loophole for sales to the government by 'bid brokers.'<sup>1</sup>

The Department reopened the comment period on the proposed special definition for sixty days, to ensure that interested parties had sufficient opportunity to comment, and to ensure that the Department had sufficient information in deciding what further rulemaking activity was appropriate (55 FR 50725; December 10, 1990). Commenters responding to this second Notice were invited to focus particular attention in the comments, in addition to commenting on the substance of the proposed definition itself, on the following two areas: (1) The extent to

<sup>1</sup> H.R. Rep. No. 101-987, 101st Cong., 2d Sess., pp. 42-43.

which the existing, standard PCA definitions for "manufacturer" and "regular dealer" present problems to the Federal Government in its ability to efficiently and effectively procure needed information processing systems and related ADP equipment; and, (2) whether the criteria specified in the proposed special definition were sufficient to prevent "bid brokering," or whether additional limitations or refinements were needed in the rule to ensure that pure "bid brokering" did not occur under the guise of systems integration.

#### Summary of Comments

The major issues presented in the comments received during the two comment periods are discussed below, followed by the Department's analysis and responses to those comments.

#### Comments on June 22, 1989 NPRM

The Department received written comments during the initial comment period from the Information Resources Management Service of the General Services Administration (GSA) and the Association of Data Processing Service Organizations (ADAPSO), a computer software and services industry association. One additional comment received from the U.S. Department of Agriculture after the close of the comment period was also included in the record. All comments generally supported the proposal.

GSA noted that, in distinguishing the types of solicitations and contracts to be within the intended scope of the information systems integrator definition, the proposal alternatively referred to only "functional" specifications on the one hand (within the definition), and to "specific make and model" specifications on the other (outside the definition). Under the Competition in Contracting Act of 1984 (Pub. L. 98-369), as implemented in the Federal Acquisition Regulations (48 CFR 10.002 (a)(4)) and the Federal Information Resources Management Regulations (41 CFR 201-30.013 (1989)), "performance" and "design" specifications are two additional types of specifications authorized for use in Government solicitations, provided their use in a particular procurement constitutes the best statement of the procuring agency's needs. GSA recommended that the proposed PCA regulation be revised to address the entire spectrum of Government specifications, and to include "performance" and "design" specifications with "functional" specifications when describing the types

of solicitations within the scope of the new systems integrator definition.

#### Comments on December 10, 1990 Notice

The Department reopened the comment period for sixty days beginning December 10, 1990 (55 FR 50725). Twenty-three comments were timely filed by Federal agencies, systems integrators and firms in the information technology field, consultants, associations representing the ADP industry and/or business equipment manufacturers, ADP equipment manufacturers, and others, as follows: Association of Data Processing Service Organizations (ADAPSO); Amdahl Corporation; Andersen Consulting; AT&T; BDM International, Inc.; Boeing Computer Services; Chartway Technologies; Computer and Business Equipment Manufacturers Association (CBEMA); Coalition of Minority Dealers (CMD); Department of Agriculture (USDA); Department of the Army (DOA); Department of Justice (DOJ); Department of Transportation (DOT); Department of Treasury, Internal Revenue Service (IRS); EDS; Federal Bar Association; Federation of Government Information Processing Councils; General Services Administration (GSA); Information Resources Management Service; International Business Machines Corporation (IBM); PRC Inc.; Professional Services Council; Sysorex Information System, Inc.; and Tektronix. The Farmers Home Administration (FmHA), Department of Agriculture (on behalf of the Interagency Committee on Information Resources Management and FmHA), and the Department of Housing and Urban Development each submitted general supporting comments after the comment period closed which were also included in the record. These commenters expressed universal support for the proposal generally, and some suggested particular changes. No comments objected to the adoption of a special definition for information systems integrators. A summary of these comments is presented below addressing the major points raised.

#### Need for the Special Definition

Commenters made the following observations concerning the need for the rule:

Revenues in 1989 for systems integrators operating in the Federal sector were placed at \$5.3 billion (more than 50% of total U.S. systems integration revenues for 1989). It was suggested that the Federal share will exceed \$10 billion by 1995 (future growth in the Federal sector was estimated at 19% per year).

The proposal is an important step in reconciling PCA with current government needs and ADP industry practices. The current rules have created uncertainty in government and industry. Hardware manufacturers have at times sought to exploit the uncertainty by threatening to challenge integrators' eligibility in an effort to reduce competition and limit an agency's choice among alternate systems.

The current rules adversely affect the government's procurement of information systems: they fail to recognize the uniqueness of the systems integrator industry, and were intended to avoid the historic broker relationship which is inappropriate for information systems procurements. The strictness of the existing definitions, read in conjunction with commercial practices in the industry, makes it difficult to prove eligibility. If systems integrators would be declared ineligible, it would be almost impossible for the government to meet its information processing systems needs. And reduced competition would be contrary to the goals of the Competition in Contracting Act.

The existing inventory requirement is costly—integrators deal in products not commonly held in inventory that are expensive, highly specialized, and purchased through special orders or by drop shipment. Few integrators have the resources to maintain inventories of expensive and highly sensitive equipment that is easily damaged during handling, storage and transit. For mainframes, storage and inventory costs are particularly prohibitive. Manufacturers often limit production of large items to orders on hand. Moreover, the product life cycle for ADP equipment is 18 months or less, a further disincentive for integrators to purchase and store equipment in advance of orders.

The inventory requirement excludes many firms from consideration that presently provide a value-added systems integration service, which creates an artificial difference between commercial business and government practices, increases the government's costs and reduces technical opportunities. Strictly applied, the current definition would qualify only manufacturers, which would limit competition, inhibit multiple-product, systems solutions, and increase costs. The change will promote competition and reduce the risk of costly and time-consuming bid protests due to the ambiguity in the existing definitions, and update PCA's definitions to specifically address information services procurement techniques that did not exist when PCA was enacted.

Uncertainty as to PCA eligibility has caused certain integrators to maintain a stock of inventory (which they otherwise would not maintain) to qualify as a "regulator dealer." Others attempt to do some assembly work at their own plant (at greater expense than might otherwise be necessary) to qualify as an "assembler" (and thus as a "manufacturer"). Such actions are contrary to industry practice, make contractors less efficient, and drive up the cost for the government's information processing. The uncertainty has resulted in investigations of eligibility which take time and money, delay acquisitions, and divert resources from the government's underlying need for information processing.

Because this industry is so dynamic, the government cannot readily determine the most advantageous offer on a particular solicitation. The government needs the expertise of systems integrators to identify the best mix of available hardware and software to meet the government's needs. The proposal will encourage the contractor to tailor systems based upon government requirements and not merely sell items the contractor has on hand. Contracting with an outside firm to design and assemble a system enables the agency to focus on the goals of the system rather than its technical specifications, allowing effective use of limited resources.

Integrators play an important and crucial role in developing and implementing information processing systems in DOT, and add significantly to DOT effectiveness in managing and maintaining such systems. Integrators have played an important role in recent IRS ADP acquisitions. Large and increasingly complex systems required to meet Government needs demand new approaches to solving problems that integrators can often meet. The proposal promotes competition and maximizes access to ADP expertise in the private sector. Excluding integrators from upcoming IRS ADP procurements would have a negative impact on the Tax System Modernization effort.

For larger ADP systems, the buyer's unique requirements determine the make-up of the system. Components must be tailored to the user's needs, and one large ADP system does not usually contain the same components as another. Thus the systems generally are not assembled with parts from inventory. The exception, known as a "total package procurement," comes from the few large original equipment manufacturers (OEMs) that assemble systems using elements that only they

produce. Such packages may not always be the best combination of hardware, software, maintenance and price to meet the government's needs.

Integrators represent a unique resource to the government: Because they have no vested interest in any one particular hardware or software product, they may select products based on the government's requirements only. Integrators can build a system to government specifications using sources from several vendors to produce optimal price and performance. This is encouraged by the Federal Information Resources Management Regulation (FIRMR), which directs agencies to avoid total package procurements by stating specifications in terms of performance or function rather than using sole source or "brand name or equal" specifications that rely exclusively on a particular maker's product line (FIRMR § 201-11.002-1 (1989)).

The existing definitions do not address the most significant "value added" by integrators: Professional know-how to track emerging product lines and combine products to serve different data processing requirements. Instead, the eligibility focus is on arbitrary, peripheral activities like manual replacement of computer chips on circuit boards or rewiring inside a computer cabinet. An integrator "produces" customized computer or telecommunications systems, adding value through skillful engineering and design to the components fabricated by others. But, engineering, planning, design, inspection, quality control, testing, marking, packaging, and repackaging are not, alone or in combination, "manufacturing" under PCA (41 CFR 50-206.51(h)). The "assembler" definition does not fit because of the requirement that assembly must include "substantial and significant fabrication or production of the desired product."

Integrators benefit the government by providing fully integrated information processing systems, in the form of creatively designed, mixed-vendor systems in a competitive environment, which enhances cost-effectiveness. Federal agencies acquire specialized technical knowledge and project management skills from integrators that usually are not available from within the agency itself. Thus, integrators perform functions that are of foremost importance to the efficient and effective utilization of information processing technology for many Federal agencies. Without integrators, the government would assume the schedule and cost

risks associated with integrating complex technologies.

The foregoing views expressed by commenters support the Department's earlier belief that circumstances exist to support the promulgation of a special definition for this industry under the authority granted by the Act for such actions. No comments were received questioning the need for a special definition. No comments were received asserting that the Government is able or would be able to meet its information processing requirements satisfactorily under the present definitions and in the absence of the special definition. Accordingly, the Administrator finds that in the absence of a special definition for "information system integrators," the conduct of Government business would be seriously impaired.

#### *Protection Against "Bid Brokering"*

Commenters offered the following points on whether the proposed special definition contains sufficient protections against bid brokering.

All commenters agreed that the proposal should prevent "bid brokering" because the types of integration responsibilities described in the rule adequately distinguish between the furnishing of true value-added services and simple bid brokering. "Fronts" cannot perform the specialized tasks of system design, selection and acquisition of components, assembly, and assumption of risk for a fully operational system. As proposed, vendors must meet a multi-step test with respect to a procurement to qualify: The contractor must be engaged in systems integration and have the sophistication to perform as genuine systems integrators; the solicitation must call for delivery of a fully operational system; and the contractor must add value through performance of the functions listed in the definition. "Front" organizations would not meet such demanding criteria. Brokers typically would not have the capacity to design, select and acquire components, assemble, provide, and in particular assume the risk for performance of a fully operational complex system as required by the rule.

The functional responsibilities described in the proposal were considered by several commenters to be more than adequate for agencies to determine whether an offeror is proposing valid "added value" integration services, as opposed to assuming a bid brokering role. Because the proposed criteria exclude specific make and model contracts, USDA believes the criteria will sufficiently prevent bid brokering and DOJ

commented that the criteria are sufficient.

DOA commented that there is no risk in this industry of the type of broker relationship that the Act was intended to prevent. Congress sought to prevent "10 percenters" from purchasing for the government what the government could buy for itself. When the government seeks information systems, the integrator provides experience and expertise not available within the government. Special skills of integrators enhance the government's ability to obtain needed systems at the best possible cost.

In the Department's view, the intent behind the special definition was to recognize already established and growing practices in the ADP industry for large-scale, complex, computer systems contracts to be awarded to systems integrators, while at the same time preserving PCA's policy that "bid brokers" not be eligible for award of contracts subject to the Act. The proposed definition was written to only apply to procurements containing designated functional ADP system specifications, under which various manufacturers' products meeting the designated performance criteria would qualify, and to only those procurements calling for substantive integration functions to be performed. Procurements that specified particular makes or models of ADP equipment to be furnished, and those that did not call for integration functions to be performed, were intended not to be considered under the special definition. Instead, "brand name" or "make or model" specifications would continue to be subject to the standard PCA definitions for "manufacturer" or "regular dealer." The Department believes that this approach to the special definition will effectuate the policy of the PCA.

#### GSA's Federal Information Resources Management Regulation

In the Notice of Proposed Rulemaking published June 22, 1989 (54 FR 26212), the Department advised that the proposed PCA definition for "information systems integrator" was based in part on terms then codified in the Federal Information Resources Management Regulation (FIRMR) issued by the General Services Administration (GSA). The Department further advised that GSA had proposed to revise FIRMR part 201-2 (41 CFR part 201-2) to establish a definition for ADP entitled "Federal information processing resources," and that the Department would give full consideration to the final revisions in the FIRMR when the Department finalized its PCA

rulemaking. The December 10, 1990 Notice reopening the comment period on the proposed special PCA definition advised that GSA had issued a final rule amending FIRMR part 201-2, which was published in the *Federal Register* on July 27, 1990, at 55 FR 30705. On December 28, 1990, at 55 FR 53386, GSA issued a final rule, effective April 29, 1991, that replaced the existing FIRMR with a new structure under the FIRMR Improvement Project. The new FIRMR continues to use the umbrella term "Federal information processing (FIP) resources" to identify ADP and telecommunications resources that are subject to GSA's exclusive procurement authority, and applies to all solicitations for FIP resources issued on or after April 29, 1991.

GSA revised the FIRMR (41 CFR chapter 201) to clarify the applicability of GSA's authority to the acquisition, management, and use of information resources by Federal agencies. The most recent amendment under the FIRMR Improvement Project replaced the existing FIRMR in the form of a republication of the chapter (see 55 FR 53386; December 28, 1990). The FIRMR uses the umbrella term "Federal information processing (FIP) resources" to identify ADP and telecommunications resources subject to GSA authority under the FIRMR. "Federal information processing (FIP) resources" is defined in FIRMR 201-4.001 (41 CFR 201-4.001) (and § 201-39.201) as automatic data processing equipment (ADPE) as provided in Public Law 99-500 (40 U.S.C. 759(a)(2)), as follows:

Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information by a Federal agency; or under a contract with a Federal agency which (1) requires the use of such equipment, or (2) requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment. Such term includes computers; ancillary equipment; software, firmware, and similar procedures; services, including support services; and related resources as defined by regulations issued by the Administrator for General Services.

As discussed earlier GSA suggested several changes in the proposed special definition to ensure its compatibility with the FIRMR. In particular, the proposed special PCA definition only expressly provided coverage where "functional" specifications were employed. GSA noted that "performance" and "design" specifications are also permissible (in

addition to "functional"), provided they are the best statement of agency needs in a given procurement. As modified to include the broader range of specifications, the proposal would still require substantial value to be added by integrators, thereby retaining the protection from bid brokering. GSA suggested additional changes to use "FIP system" language in the definition, for "Federal Information Processing System," in lieu of the terms "information processing system" and "functional ADP system specifications" included in the proposed PCA special definition.

ADAPSO endorsed GSA's initial (7/24/89) comments on the original proposal for including within the definition the "entire spectrum of Government specifications, that is, [to] allow 'functional, performance and design specifications,'" and supported updating the proposed special definition to conform to recent changes in the FIRMR ("Federal information processing resources"). IBM commented that equipment performance specifications, compatible functionally equivalent specifications, or brand name or equivalent specifications are also valid for full and open competition procurements, and suggested that the rule should incorporate these forms of specification in addition to functional specifications.

The Department has determined that for purposes of the portion of the definition that describes the class of contracts included in the information systems integrator definition under PCA, performance specifications (ranges of acceptable characteristics, minimum acceptable standards, etc.) and/or design specifications (when these reflect the best statement of the Government's ADP mission needs in a particular procurement) may be added to or substituted for functional specifications. Appropriate revisions have been made in the final rule. The Department has also made editorial revisions in the final rule to ensure compatibility with terms used in the revised FIRMR. Make or model specifications are not appropriate as they are not compatible with the function of systems integrators and they create a potential for "bid brokering" which this rule intends to exclude.

Under applicable procurement law and regulations, agencies are required to base their specifications and purchase descriptions on minimum needs and the available market to satisfy those needs. Specifications and purchase descriptions can be stated in terms of function, so that a variety of products (or services) may qualify; performance,

including a range of acceptable characteristics or minimum acceptable standards; or design. Agency descriptions, whenever practicable, are to be stated in terms of functions to be performed or performance required. (FAR 10.002(a) & (b); FIRM 201-20.103-3)

#### *Other Issues and Suggested Changes*

CMD recommended the inventory requirement be waived for *all* ADP contracts, not just integration contracts. Tektronix stated that the exemption should be expanded to cover systems integrators generally, not just in the ADP industry (e.g., high-technology, manufacturing test, scientific and medical industries). Providing relief for "systems integrators" (of all types) from the need to maintain stock from which sales are made would enable these businesses to incorporate the best available products and technologies when meeting functional system specifications, whether ADP, manufacturing test, medical, or scientific needs.

This rulemaking is concerned only with information systems integration contracts as such contracts are expressly defined in this rule, and only to the extent of providing an alternative means of qualifying for eligibility under contracts subject to PCA. The Department does not have information regarding the extent systems integration takes place in fields other than information systems. Nor does the Department have information that problems exist in other fields involving the acquisition and integration of materials, supplies, etc. The Department recognizes, however, that information systems integration contracts may be awarded by the Government in various fields of endeavor (including, for example, the fields of science and medicine among many others), and that there is an evolving interdependence between ADP and other developing technologies (as reflected in the FIRM).

CBEMA and others expressed concern that the definition was too narrow in that it disqualified systems integrators when the government specifies a certain make or model to meet its requirements—"e.g. a bid for peripherals which must be compatible with an existing system." CBEMA suggested it may not be in the government's best interest to prohibit integrators from participating in these types of acquisitions.

A "bid for peripherals" would, in most cases, fall outside the intended scope of a system integration contract. By international design of the special definition, specific make or model

acquisitions would continue to be subject to the standard "manufacturer" or "regular dealer" definitions, for the reasons already discussed. Otherwise, bid brokering of the "peripherals" (to the CBEMA's example) could occur under the guise of a system integration contract.

The definition's requirement that an integrator perform the entire range of integrator functions, such that the procurement must be for a fully operational system, was viewed by CMD as violative of existing FAR provisions that prohibit organizational conflicts of interest (FAR § 9.505-1 & -2). Further, CMD stated it was CMD's experience that integration contracts are not awarded as contemplated by the proposal.

The Department believes that CMD misreads the FAR provisions cited in relation to the proposed special definition, and misconceives the intent and effect of the proposed definition. By international design, in order to qualify for eligibility under the proposed special definition, a systems integrator contractor must have overall contractual responsibility for development, integration, assembly and checkout of the system, thus removing such procurements from the prohibitions stated in the FAR section cited by CMD. The prohibitions cited by CMD refer to systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production. The FAR provisions cited by CMD pertain to a contractor preparing specifications or work statements in the situation where such specifications or work statements will later be used in a subsequent, competitive acquisition for equipment. This would not be the case under the proposed PCA definition for systems integrators. (See also FAR 9.505-2(a)(3) regarding development work.)

FBA commented that the proposed structure provides for eligibility on the basis of the functions to be performed on a particular contract and not on the general nature of the integrator's business, which differs from the approach in previous special definitions (citing machine tools and dealers in used ADP equipment). FBA suggested this may have unintended results. An entity that has never performed integrated work could thus qualify according to FBA, and if bid brokering is a concern it would more likely occur with a company not generally established as a systems integrator. FBA suggested there appears to be nothing to prevent any person from qualifying on a

particular contract so long as it involves systems integration.

Sysorex also commented that eligibility should be based on the nature of the integrator's regularly-conducted business, not the specific functions required under a given contract. As Sysorex read the proposal, firms that have not previously performed integration functions could qualify, based simply on the tasks required by the terms of a particular contract. Sysorex stated this is too generous and should be revised to limit the definition to established integrators. Tektronix recommended that a criterion be added to require that the business responding to the procurement request be an established business prior to the specific procurement request, perform such work on a "regular basis," and have a "legal business relationship" (which was not further defined) with the vendors whose products it will use in its "systems" solution.

These commenters appear to have misread the proposal. The definition applies only to " \* \* \* a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems \* \* \*". The definition is already based on the nature of the integrator's business (in addition to the nature of the class of contracts), and applies only to "established" firms.

Conversely, FBA noted that some bona fide systems integrators might be ineligible for a particular contract because the full range of systems integration functions are not required, which "would appear to exclude Multiple Award Schedule contracts, \* \* \* [and there] is no reason to suppose that the labor standards that the PCA was designed to protect would in any way be comprised by allowing an otherwise bona fide systems integrator to compete for such contracts."

The references to "functional specifications" and "mission objectives" will tend to unnecessarily limit the applicability of the definition, according to FBA. Use of other than functional specifications and the absence of a statement of mission objectives do not mean that a procurement does not entail systems integration.

IRS recommended that the definition focus on the vendor and not depend on the particular requirements for a fully operational "systems" contract (an integrator could be excluded if the Government decides it needs less than a fully operational system). Alternatively, IRS recommended that "fully

operational information processing system" be further defined.

Sysorex suggested that "functional" and "mission objectives" be deleted—solicitations do not always state agency mission objectives or functional characteristics; the caveat that specifications may not simply describe make and model of equipment should be retained. The use of functional specifications and mission needs will limit eligibility to the few giants according to Sysorex—there should not be artificial, unnecessary and anti-competitive roadblocks to qualification favoring only a few firms.

The Department did not intend through this special definition to provide a blanket waiver of PCA's eligibility requirements for any and all firms capable of assuming the mantle of "integrator." PCA empowers the Secretary of Labor to administratively exempt "bids for a contract or class of contracts" from the eligibility requirements upon finding that it will be so difficult to obtain satisfactory bids for the contract(s) at issue under the stipulated restrictions that the conduct of Government business would be seriously impaired (41 CFR 50-201.101(a)(3)(ii); PCA § 6). Thus, there is an express need to limit the definition to the specific class of contracts for which the exigency finding is being made under the requirements of the statute, although some accommodation can be made through clarifications to address the comments with respect to "functional" and "mission objectives" (i.e., GSA's concerns, noted above; revisions have been made in the final rule to address "performance" and "design" standards). The proposed special definition is based on such an exigency finding for the class of contracts referred to as systems integration contracts, as the Department defines that class of contracts in this rule. Other types of contracts falling outside the definition provided by this rule are not affected by the rule. The remaining "limitations" of the definition are essential for purposes of accurately defining and delimiting the intended scope of the class of contracts for which the exigency finding is being made, in a manner that, in DOL's view, " \* \* \* closes the loophole for sales to the government by 'bid brokers' \* \* \*," to quote the House Government Operations Committee report. No similar finding of exigency or impairment of Government business has been suggested for extending the scope of the definition to include the procurement of ADP equipment under "Multiple Award Schedule contracts"

referred to by FBA, or to any other types of procurements mentioned in the comments. The government, not the contractor, is the integrator when purchases are made from "Multiple Award Schedule contracts."

#### Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

#### Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect in connection with the proposed rule published June 22, 1989. Accordingly, no regulatory flexibility analysis is required. However, the new definition would relieve potential, qualifying contractors in this industry, both large and small, from having to maintain stock in a manner that is inconsistent with industry practices.

#### Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

#### List of Subjects in 41 CFR Part 50-201

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble above, 41 CFR part 50-201 is amended as set forth below.

Signed at Washington, D.C., this 9th day of July, 1992.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator.

#### PART 50-201—GENERAL REGULATIONS

41 CFR part 50-201 is amended as follows:

1. The authority citation for part 50-201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50-201.101, paragraph (a) is amended by adding a new paragraph (a)(2)(xii) to read as follows:

#### § 50-201.101 Manufacturer or regular dealer.

(a) Definitions. \* \* \*

(2) \* \* \*

(xii)(A) An "information systems integrator" is a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems, comprised of "Federal information processing resources" as defined in 41 CFR 201-4.001, that meet the contracting agency's designated information processing needs and program objectives stated in terms of functional, performance, and/or design requirements. An "information systems integrator" may qualify as a regular dealer under contracts which meet the following criteria:

(1) The government agency solicits to acquire a fully operational information processing system;

(2) The purchase description and system specifications are not expressed in a form so restrictive that only a specific make or model of a product, or a particular feature of a product peculiar to one manufacturer, would meet the Government's needs, but rather are expressed in terms which delineate functional, performance or design requirements provided they constitute the best statement of agency needs in a particular procurement, for the data processing or program objectives to be accomplished;

(3) The contractor assumes the responsibility for designing, delivering, implementing, and testing (and, where required by the contract, maintaining) a fully operational information processing

system that meets the agency's designated specifications; and

(4) The contractor bears the risk of, and is responsible to the agency for correcting, any system deficiencies or component failures regardless of the manufacturer of the component or components involved.

(B) An "information systems integrator" will, in accordance with the contract, perform substantially all of the following functions:

(1) Analyze the agency's requirements and needs;

(2) Assess currently-available technological offerings and identify/evaluate alternative system designs;

(3) Determine the composition of the system;

(4) Select and deliver the Federal information processing resources;

(5) Customize, modify, or configure components (hardware, software, and supporting equipment) if necessary to

satisfy inter-connectibility/compatibility requirements and the agency's specialized information processing needs;

(6) Assemble, install, test, implement, and render operational the final information processing system.

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[FR Doc. 92-16635 Filed 7-15-92; 8:45 am]

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# Federal Register

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Thursday  
July 16, 1992

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## Part III

### Department of Defense

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#### Department of the Army

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#### Request for Nominations to the Inland Waterways Users Board; Notice

## DEPARTMENT OF DEFENSE

## Department of the Army

**Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board****AGENCY:** Department of the Army, DOD.**ACTION:** Notice in the Federal Register.

**SUMMARY:** Section 302 of Public Law 99-662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for five appointments or reappointments to two-year terms that will begin January 1, 1993.

**EFFECTIVE DATE:** July 15, 1992.

**ADDRESSES:** Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310-0103. Attention: Inland Waterways Users Board Nominations Committee.

**FOR FURTHER INFORMATION CONTACT:** Dr. G. Edward Dickey, Acting Principal Deputy Assistant Secretary of the Army (Civil Works) (703) 697-4671.

**SUPPLEMENTARY INFORMATION:** The selection, service, and appointment of Board members are covered by provisions of section 302 of Public Law 99-662. The substance of those provisions is as follows:

**Selection**

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics.

**Service**

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

**Appointment**

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92-463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

**Carriers and Shippers.** The law uses the terms "primary users and shippers." Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. **Geographical Representation.** The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95-502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

**Commodity Representation**

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in

**Waterborne commerce of the United States**

In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably

representative of the above commodity categories.

Reflecting preceding selection criteria, the present representation by Board members is as follows: Members whose terms expire December 31, 1992, include two shipper representatives representing (1) the Upper Mississippi River region, and farm and food products, coal, and (2) the Columbia River region, and farm and food products; and, three carrier representatives representing (1) the Ohio River region (two carriers) and farm and food products, coal, petroleum, chemicals, minerals and metals, and (2) the Gulf Intracoastal Waterway in Louisiana and Texas, and petroleum.

Members whose terms expire December 31, 1993, include two shipper representatives representing (1) the Lower Mississippi River region, and farm and food products, and (2) the East Gulf region, and coal; two carrier representatives representing the Ohio River region, and coal, farm and food products, petroleum, chemicals, minerals, metals, and, two shipper/carrier representatives representing the Ohio River region, and coal.

Nominations to replace members whose terms will expire December 31, 1992, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's Federal Register notice published July 19, 1991, have been retained for consideration for appointment along with nominations received in response to this Federal Register notice. Renomination is not required but may be desirable. Two of the five members whose terms expire December 31, 1992, are eligible for reappointment.

**Deadline for Nominations:** All nominations must be received at the address shown above no later than August 15, 1992.

**Herbert H. Kennon,**

*Deputy Director of Civil Works.*

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Thursday  
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## Part IV

## Environmental Protection Agency

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Initial List of Categories of Sources  
Under Section 112(c)(1) of the Clean Air  
Act Amendments of 1990; Notice

# ENVIRONMENTAL PROTECTION AGENCY

[FRL-4152-7]

## Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of initial list of categories of major and area sources.

**SUMMARY:** This notice publishes an initial list of categories of major and area sources of hazardous air pollutants (HAP's), as required under section 112(c)(1) of the Clean Air Act (CAA) as amended in 1990. The statute requires the Agency to promulgate regulations, over the 10 years following amendment of the CAA, establishing emission standards for each listed category of major sources and area sources.

Today's list does not constitute completion of the listing requirements under section 112(c)(3), pursuant to the area source program under section 112(k)(3)(B), or the listing requirements under section 112(c)(6), relating to sources of specific pollutants. Today's notice does not contain guidance or procedures for filing petitions to delete listed categories of sources, as allowed under section 112(c)(9)(B). Moreover, because of uncertainties in the available data bases concerning sources and emissions of HAP's, all categories of major and area sources meeting the listing criteria in section 112(c)(1) may not be included on today's list. In addition, all categories of sources may not be disaggregated to the extent necessary eventually for the establishment of emission standards. Descriptions of the categories on today's list are included in the docket, to identify industry sectors, processes and equipment that may constitute each listed category.

The Agency considers the listing of categories of sources under section 112(c)(1) to be an ongoing process. Under section 112(c)(1), the Agency is obligated to revise the list if appropriate, in response to public comment or new information, from "time to time, but no less often than every 8 years." The Agency intends to maintain the list as part of the regulatory development process of establishing emission standards and may revise the list on the basis of deletion determinations as part of the source category deletion process to be defined in a later Federal Register notice.

**EFFECTIVE DATE:** July 16, 1992.

**ADDRESSES:** Docket. Docket No. A-90-49, containing supporting information used in developing the notice, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the Agency's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning categories of sources involving the production, handling, refining or use of chemicals or petroleum, or products thereof, contact Mr. David Svendsgaard, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-2380.

For information concerning categories of sources involving fuel combustion, incineration, metals and minerals processing, contact Mr. William Maxwell, telephone number (919) 541-5430, Industrial Studies Branch, at the above address.

For general information concerning this notice, contact Mr. Thomas Lahre, Pollutant Assessment Branch, telephone number (919) 541-5668, at the above address.

**SUPPLEMENTARY INFORMATION:** The information presented in this notice is organized as follows:

- I. Legislative Background Relating to the Initial Source Category List
- II. Identification of Categories and Subcategories on June 21, 1991 Preliminary Draft List
- III. Discussion of Major Issues and Responses to Comments
  - A. Delineation of Categories and Subcategories
  - B. Listing of Categories of Area Sources
  - C. Data Base Quality
  - D. Consistency With Section 112 and Section 129 Provisions Relating to Specific Categories of Sources
  - E. Listing of Regulated Categories
  - F. Judicial Review of List
- IV. Finding of Threat of Adverse Effects for Categories of Area Sources
  - A. Finding of Threat of Adverse Effects for Category of Commercial Sterilizers Using Ethylene Oxide
  - B. Finding of Threat of Adverse Effects for Categories of Chromium Electroplaters and Anodizers
  - C. Finding of Threat of Adverse Effects for Category of Commercial Perchloroethylene Dry Cleaners
  - D. Finding of Threat of Adverse Effects for Category of Cleaners Using Halogenated Solvents
  - E. Finding of Threat of Adverse Effects for Category of Asbestos Processing
- V. Descriptions of Listed Categories

- VI. Relationship of List to Definition of Source for Early Reduction
- VII. Administrative Requirements
  - A. Docket
  - B. Executive Order 12291 Review
  - C. Paperwork Reduction Act
  - D. Regulatory Flexibility Act Compliance

## Table 1.—Initial List of Categories of Major and Area Sources of Hazardous Air Pollutants

### Acronym List

CAA=Clean Air Act  
 CFC-113=trichlorotrifluoroethane  
 CFR=Code of Federal Regulations  
 CTG=Control Technology Guidelines  
 CNS=central nervous system  
 Cr(+3)=trivalent chromium  
 Cr(+6)=hexavalent chromium  
 CWA=Clean Water Act  
 DOE=Department of Energy  
 FR=Federal Register  
 GACT=generally available control technology  
 HAP=hazardous air pollutants  
 kg/yr=kilograms per year  
 MACT=maximum achievable control technology  
 lb/yr=pounds per year  
 MC=methylene chloride  
 Mg/yr=megagrams per year  
 MSHA=Mine Safety and Health Administration  
 NEDS=National Emissions Data System  
 NESHAP=national emission standards for hazardous air pollutants  
 NRC=Nuclear Regulatory Commission  
 NSPS=new source performance standards  
 OMB=Office of Management and Budget  
 OSHA=Occupational Safety and Health Administration  
 OTVC=open top vapor cleaners  
 PCE=perchloroethylene  
 ppm=parts per million  
 PM=particulate matter  
 POTW=publicly owned treatment works  
 PSD=prevention of significant deterioration  
 RACT=reasonably available control technology  
 RCRA=Resource Conservation and Recovery Act  
 SCC=source classification codes  
 SIC=Standard Industrial Classification  
 SOCM=synthetic organic chemical manufacturing industry  
 TCA=1,1,1-trichloroethane  
 TCE=trichloroethylene  
 tm=trademark  
 TRIS=Toxic Release Inventory System  
 tpy=tons per year  
 VOC=volatile organic compounds  
 U.S.=United States

## I. Legislative Background Relating to the Initial Source Category List

The Clean Air Act Amendments of 1990 (Pub. L. 101-549) require, under the revisions to section 112, that the Agency evaluate and promulgate regulations requiring control of emissions of HAP's from categories of major and area sources. The term "major source" is defined in paragraph 112(a)(1) to mean any stationary source or group of

stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.

The term "stationary source," from section 111, means any building, structure, facility, or installation which emits or may emit any air pollutant. The Agency may establish a lesser quantity of pollutant emissions for the definition of a major source than that specified in the previous sentence, based on various characteristics of the pollutants being emitted (including potency, persistence, potential for bioaccumulation, or other relevant factors). The Agency may establish different criteria for the definition of a major source in the case of radionuclides. The term "area source," as defined in section 112(a)(2), means any stationary source of HAP's that is not a major source. Section 112(c) requires the Agency to list categories of major sources and area sources. Because most groupings of sources are based on process or product-oriented criteria, they may include a mix of both major and area sources. The distinction between categories of major and area sources is discussed in more detail later in this notice.

Section 112(b) includes a list of chemicals, compounds, or groups of chemicals deemed by Congress to be hazardous air pollutants. Section 112(c)(1) requires the Agency to publish, within 1 year of enactment of the CAA Amendments of 1990, a list of categories of major and area sources emitting one or more listed HAP. Categories of area sources may be listed subject to the additional requirements of section 112(c)(3), which require the Agency to find a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under (Section 112).

There are additional requirements for listing source categories under section 112(c)(3) and section 112(c)(6). Section 112(c)(3) refers to the area source strategy required under section 112(k). This strategy requires that the Agency list in 5 years, and subject to regulation in 10 years, sufficient categories of area sources to account for 90 percent of the aggregate emissions of each of 30 or more HAP's. These 30 or more HAP's shall be those determined to present the greatest threat to public health in the largest number of urban areas. Section 112(c)(6) requires the listing within 5 years of categories of sources assuring

that at least 90 percent of the aggregate emissions of each of seven specific pollutants are subject to emission standards under section 112(d) within 10 years of enactment of the CAA Amendments. Although some of the categories that will be identified under these sections are probably already included on today's list, there are likely to be others which have not yet been identified. The publication of today's list does not constitute completion of the requirements of section 112(c)(3) or section 112(c)(6).

Other requirements in section 112(c) affect the listing of specific categories of sources. Section 112(c)(4) gives the Agency the discretion to list any category of sources previously regulated under section 112 before enactment of the CAA Amendments of 1990. Section 112(c)(7) requires the Agency to establish a separate category for research facilities as necessary to assure equitable treatment of such facilities. Section 112(c)(8) requires the Agency to list boat manufacturing as a separate subcategory when establishing emissions standards for styrene. In addition, there are provisions elsewhere in section 112 and section 129 that impose listing requirements on the Agency, both directly and indirectly. These provisions, and the Agency's resulting actions, are discussed in detail in sections III.D and III.E in today's notice.

Revisions to today's list may also result from deletion determinations under section 112(c)(9)(B). Under section 112(c)(9)(B), the Agency may delete a category from the list, based on petition of any person or on the Administrator's own motion, upon a determination that: (1) In the case of sources that emit HAP's that may result in cancer, no source in the category (or group of sources in the case of area sources) emits HAP's in quantities that may cause lifetime cancer risk greater than 1-in-1 million to the most exposed individual; or, (2) in the case of sources that emit HAP's that may result in non-cancer adverse health effects or adverse environmental effects, emissions from no source in the category (or group of sources in the case of area sources) exceed a level adequate to protect public health with an ample margin of safety and no adverse environmental effects will result. The Agency shall grant or deny a petition to delete a category within 1 year after the petition is filed. Procedures for such petitions will be addressed in a separate Federal Register notice. Under section 112(c)(9)(A), the Agency shall delete a source category if all pollutants emitted

by that category have been deleted from the HAP list under section 112(b)(3)(C) or section 112(b)(3)(D).

Revisions to today's list may also arise from the establishment of lesser quantities for the definition of major sources, under section 112(a), resulting in additional categories of major sources. Special studies required under various provisions of section 112, or information gathered by the Agency during the regulatory development process, may also result in changes to the list.

Section 112(c)(2) requires the establishment of emission standards under section 112(d) for every category of sources included on the initial list published pursuant to section 112(c)(1). Emission standards established for categories listed under section 112(c) shall be promulgated according to the schedule for standards set forth in section 112(e). In determining where source categories should be placed on this schedule under section 112(e), the Agency shall consider the known or anticipated adverse effects of the emitted pollutants on health and the environment; the quantity and location of emissions; and the efficiency of grouping categories according to the pollutants emitted or the processes or technologies used. The schedule for promulgation of emission standards for each category of HAP sources is to be published, after an opportunity for comment, within 24 months of enactment.

## II. Identification of Categories and Subcategories on June 21, 1991 Preliminary Draft List

That list of categories of sources was made available for public comment on June 21, 1991 (56 FR 28548). The preliminary draft list was compiled from a number of data bases, described below, each having certain strengths and weaknesses.

1. The National Emissions Data System (NEDS) is an Agency data base of reported emissions from sources emitting more than 90.7 megagrams per year (Mg/yr) [100 tons per year (tpy)] of criteria air pollutants, including volatile organic compounds (VOC) and particulate matter (PM). The sources included in NEDS are classified by unique identifiers, termed source classification codes (SCC's). Speciation profiles have been assigned to each of the SCC's. These speciation profiles are an estimate of the chemical species comprising the total VOC or PM emissions for a category. In many cases, the chemical species constituents are HAP's. A category was included on the

preliminary draft list if HAP emissions were associated with a source classification code in NEDS, but only for species profiles having a data quality ranking of "A," "B," "C," or "D." Species profiles having an "E" ranking were not used, because of insufficient quality. (See Docket No. A-90-49, Items No. II-A-45 and 46 for published species profiles.)

2. Categories of the synthetic organic chemical manufacturing industry (SOCMI) were identified from literature describing SOCMI reactants and products. A SOCMI category was listed if it either manufactured a chemical on the list of HAP's or if it used one or more of the listed HAP's to produce another chemical.

3. Published production and consumption data for organic chemicals were used to identify organic chemical end-user processes emitting HAP's. There are a total of five general category groupings for which such data were used: Foam blowing processes, process solvent use, polymerization processes, pesticide production, and pharmaceutical production. Production and consumption data were obtained for each chemical from readily available literature. Each end use of a chemical was identified as a category.

4. The Agency's Toxic Release Inventory System (TRIS) was a fourth source of data that was used to identify HAP emitters. The TRIS data base contains emissions data reported by individual industrial facilities as required under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. Emissions data in TRIS are reported on a plant wide basis. Standard Industrial Classification (SIC) Codes are reported in TRIS but the entries are usually not specific enough to identify categories of sources. For this reason, it is difficult to use the TRIS data base for identifying categories, or to determine where there is overlap between the TRIS data base and the methods described above. The TRIS data base did, however, identify plants emitting listed pollutants not identified through the methods described above.

5. The list of categories developed by using the several data sources described above was augmented by reviewing existing studies by the Agency's Office of Air Quality Planning and Standards. A major portion of this effort consisted of reviewing data developed in support of previous Federal Register notices describing previous Section 112 regulatory decisions. For the most part, the methods described above had already identified most of the categories. However, in some cases

additional categories were identified from these references and were added to the list.

Today's initial list in Table 1 is based on these same sources of data in addition to information supplied in response to the publication of the preliminary draft list.

### III. Discussion of Major Issues and Responses to Comments

In the preamble to the June 21, 1991, preliminary draft list (58 FR 28548), comments were requested on a number of issues. Over 140 comments were received from industry representatives, environmental groups, State and local air agencies, universities, other Federal Agencies, and various other public and private interests. In general, comments were received relating to: (1) The quality and inclusiveness of the data base, (2) the definition and disaggregation of various categories of sources, (3) the need for a finding of threat of adverse health or environmental effects before listing categories of area sources, and (4) alternatives for listing categories of steam electric generators and incinerators. Following is a summary of the major comments received along with responses to these comments. The selection of particular comment responses for discussion in today's notice is intended to indicate the Agency's position on the major issues raised by the commenters. (All comments and responses are contained in Docket No. A-90-49.)

#### A. Delineation of Categories and Subcategories

Section 112(c)(1) states that the Administrator shall publish a list of all categories and subcategories of major sources and area sources. The terms "category" and "subcategory" are not defined in section 112, nor is the relation of either of these terms defined with respect to the term "source."

In the June 21, 1991, notice, comment was requested on the appropriate distinctions the Agency should make between categories and subcategories. In addition, information was requested for the division, or disaggregation, of listed groups of sources into categories and subcategories, along with accompanying documentation.

#### Relationship Between Source and Category of Source

Because of the undefined relationship between source and category of sources in the CAA, this relationship needs to be defined in the context of today's initial list of categories. Section 112(a)(3) provides that "stationary source" shall have the same meaning for purposes of

this section as it has under section 111(a), which is any building, structure, facility, or installation which emits or may emit any air pollutant. As section 112 applies to all stationary sources emitting HAP's, any entity covered by this section must be a building, structure, facility or installation that emits HAP's. Whether such source is considered "major" will depend upon its size and configuration, or upon the size and configuration of the larger source of which it is a part.

A "category" of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule. Thus, for example, industrial process cooling towers would be considered a source category. Each tower emitting more than the amount of HAP's provided in section 112(a) as qualifying a source as a major source, or each tower located within a larger source emitting that amount of HAP's, would be subject to maximum achievable control technology (MACT) for major sources.

As a result, a large plant or facility, such as a refinery or chemical manufacturing plant, would clearly be a "major source," but would also comprise multiple source categories. For example, a large plant would likely contain stationary sources included within the industrial cooling tower source category, as well as sources within the process heater category, industrial boiler category, etc.

Categories having sources whose HAP emissions exceed the major source threshold in section 112(a), or having sources that are commonly located on the premises of major sources, are categories of major sources. Conversely, categories having sources which neither exceed the major source HAP emission threshold under Section 112(a), nor are commonly located on the premises of major sources, are categories of area sources.

#### Use of the Term "Category" or "Subcategory"

Several commenters suggested using only the term "category" rather than both "category" and "subcategory," for various reasons. Although the language in section 112 generally uses these terms together, seemingly interchangeably, the comments stated that there are several instances where only the term "category" is used. Sections 112(c)(9)(A) and 112(c)(9)(B)(i) provide for deleting of categories of sources only. Similarly, section 112(f)(2)(A) obligates the Administrator to promulgate standards to mitigate residual risk only for

categories of sources. In response to these comments, the Agency has decided to use the term "category" to designate all of the groupings of HAP-emitting sources in today's list. The exclusive use of the term "category" will clarify the applicable requirements of section 112. This decision does not affect the degree of disaggregation of industry groups in today's list of categories or the authority of the Agency to distinguish among classes, types, and sizes of sources in establishing emission standards. During the standard-setting process, the Agency may in some cases find it appropriate to combine several listed categories into one, or further divide a category. This decision does not affect the Agency's authority to define subcategories of sources at a later date.

An exception to the exclusive use of the term "category" has been made in the proposed rule establishing emission standards for perchloroethylene dry cleaning facilities (56 FR 64382), wherein subcategories were defined for each category to differentiate between the two major types of machines used in dry cleaning, i.e., "dry-to-dry" and "transfer." This is consistent with the Agency's strategy (discussed later in this Section) of identifying and listing disaggregated categories and/or appropriate subcategories as part of the rulemaking process, after gathering sufficient information to identify appropriate aggregations for standard-setting purposes.

#### Suggested Additions of Categories

Some commenters suggested adding specific categories to the list. In response, where the comments included reasonable documentation, the Agency has added the suggested categories.

#### Suggested Deletions of Categories

Many commenters suggested deleting categories that were on the draft preliminary list, for reasons summarized below.

Some commenters contended that all sources in certain categories are area sources, thereby requiring the Administrator to make a finding of threat of adverse health or environmental effect before listing those categories. The Agency agrees that such a finding or threat should precede listing categories of area sources (see section III.B for more discussion). Where commenters demonstrated the existence of no major sources of HAP emissions within categories, those categories were deleted from the preliminary draft list, as long as no finding of threat of adverse effects was made. The Agency may list such categories as area source

categories later if a finding of threat of adverse effects can be made, per section 112(c)(3), or may list them under the area source strategy required under section 112(k).

Some commenters contended that no sources in certain categories emitted any HAP's, and therefore should not be listed. The Agency, in response, deleted categories if a commenter provided reasonable evidence of no HAP emissions and if the Agency's own data, upon review, could not support the existence of HAP emissions.

Some commenters contended that other provisions in amended section 112, or section 129, either preclude the listing of specific categories, or give the Agency the discretion not to list specific categories at this time. In response, the Agency acknowledges that its discretion to list or omit some categories of sources is limited by other provisions. Therefore, the Agency has attempted to make today's list consistent with these other provisions. These various other provisions are discussed in detail in section III.D of today's notice.

Some commenters contended that regulations exist or are being developed under other titles of the CAA or other statutes, either by EPA or other agencies, for many categories of sources on the preliminary draft list. These commenters further argued that categories subject to these other statutes should not be listed under section 112(c)(1) and thus be subject to "dual regulation." In response, the Agency does not believe that the existence of another applicable regulation, or the imminent prospect of a regulation, either under the CAA or under another statute, gives the Agency general discretion to omit from today's list any category of sources under section 112(c)(1). (There are specific exceptions to this position, however, as is discussed in more detail in sections III.D and E of today's notice.) Moreover, listing does not necessarily lead to duplicate regulation because air emission regulations issued under another statute may become the basis for the "MACT floor," which is the minimum degree of emissions reduction prescribed for new and existing sources subject to emission standards under section 112(d).

Some commenters suggested deleting poorly defined and broadly overlapping categories of sources to avoid confusion when identifying sources subject to regulation in each category. Commenters most frequently criticized the following categories and groupings: "(product or chemical) use", "chemical intermediate", "primary and secondary metals, miscellaneous", "surface coating operations, general solvent uses," "in

situ fuel use," and "TRIS production and use," the latter involving the production or use of HAP's as reported to the Agency's TRIS data base. In response, the Agency has removed a number of previously listed categories that were poorly defined and/or broadly inclusive. For example, most of the general "(product or chemical) use" categories have been deleted. As another example, the generic "waste treatment and disposal" category has been removed. As still another example, the broad category of "TRIS production and use" has likewise been deleted. Many of the operations covered under these deleted categories are still covered in today's list, but are included in the logical parent grouping instead of in a separate category. For instance, rather than listing wastewater treatment operations as part of a generic, stand-alone wastewater treatment grouping, these operations are now included under the listing of their respective production operations. Hence, even though many broad categories still remain on today's list, the Agency has eliminated many categories that were poorly defined and overlapping. (General descriptions of all categories of sources are located in Docket No. A-90-49, Item No. IV-A-55. See section V of today's notice for more discussion of these descriptions.)

Some commenters suggested not listing categories of sources where insufficient evidence existed to demonstrate that there were any major sources in those categories. In other words, the commenters suggesting only listing categories of sources that either exceeded the quantity of HAP's required to define a major source, pursuant to section 112(a), or which are commonly located on the premises of a major source. Upon review of all comments and the original data bases, the Agency has responded by only including categories of major sources where there was reasonable certainty that at least one stationary source in the category is a major source or where sources in the category are commonly located on the premises of major sources. In cases where sources in the category typically emit less than this threshold, the Agency may nevertheless list any such category as a category of major sources if sources in that category are commonly associated with major sources. For example, industrial process cooling towers, which individually emit chromium emissions in amounts less than 0.907 Mg/yr (1 typ), are listed as a category of major sources since such towers are commonly found on the premises of petroleum refineries, chemical manufacturing plants, and

other major sources. Thus, MACT standards set for the cooling tower major source category will be applicable to cooling towers that are a component of a larger major source, such as a refinery, even though no individual source in this category is itself a major source. This position is supported by the legislative history of the 1990 amendments. Senator Durenberger, one of the managers of the Senate Bill, stated that "[t]he managers' intent is . . . that where the entire plant is a major source, any portion thereof to which a MACT standard applies is subject to that standard regardless of the total emissions from that portion." 136 Cong. Rec. S. 16927 (October 27, 1990).

Note that any such category may also be listed as a category of area sources on today's list, if accompanied by a finding of threat of adverse effect, if the Agency elects to establish standards for sources in the same category that are not major sources. For example, chrome platers and anodizers are also listed as categories of area sources on today's list because many are not located on the premises of major sources. (The listing of categories of area sources is discussed later in section III.B.)

#### Appropriate Disaggregation of Categories

Many comments were received on the extent to which the Agency identified appropriate subdivisions of industry groups. Many commenters contended that insufficient or inappropriate categories were included on the draft preliminary list and that many categories on the draft list did not sufficiently differentiate among dissimilar processes based on variations in size, operations, raw materials, emissions, controllability, etc. The major rationale for further disaggregation, per the comments, are:

1. Disaggregation of broad categories affords the Agency with scheduling flexibility in promulgating standards under section 112(d). The Agency cannot, per language in section 112(d)(1), distinguish among classes, types, and sizes of sources within a category or subcategory in establishing standards for the purpose of delaying compliance with standards. Hence, the commenters argue that the Agency must list disaggregated categories in order to avoid having to establish standards for all categories within a broad group at the same time.

2. Disaggregation of broad categories reduces the likelihood that dissimilar categories will be considered together for the purposes of defining emission standards under section 112(d), or when

determining the need for subsequent standards to address residual risk under section 112(f). The commenters argue that the definition of narrowly applicable categories of sources will promote more cost-effective, technically appropriate, and, in some cases, safer controls because any such controls would be based on a consideration of similar sources.

3. Disaggregation of broad categories into relatively narrow categories makes the source category deletion petition process more viable since the deletion criteria imposed under section 112(c)(9)(B) would have to be demonstrated for fewer sources in narrower industry groupings. Trade associations, in turn, would be better able to gather the necessary information for preparing deletion petitions if narrower industry groupings were made.

4. Disaggregation of broad categories into better resolved categories affords both industry and air agencies with a better indication of which sources may be affected by various regulatory provisions of section 112.

In contrast to the above comments, several commenters opposed excessive disaggregation of source categories. These commenters expressed concern that some categories might be disaggregated so finely as to result in the inclusion of only a few sources, which might result in MACT floors that would not result in effective emission standards.

In response to the many comments concerning appropriate disaggregation of source categories, the Agency acknowledges potential advantages and disadvantages of defining categories either very broadly or very narrowly. Ultimately, in accordance with section 112(d), the Agency will need to identify the "best controlled similar sources" when establishing emission standards for new sources in a category and "the best performing 12 percent" of sources when establishing emission standards for existing sources in a category. Hence, the Agency recognizes that further disaggregation of many listed categories of sources may be necessary prior to promulgation of emission standards. The Agency has the discretion to distinguish among classes, types, and sizes of sources within a category in establishing standards.

In general, the Agency has decided, at this time, in most cases, to list broad categories of major and area sources rather than very narrowly defined categories. The main reason for this decision is that, even considering the many comments received, the Agency has too little information to anticipate specific groupings of similar sources that

are appropriate for defining MACT floors for the purpose of establishing standards. Criteria that may need to be considered in defining categories of similar sources include similarities in: Process operations (including differences between batch and continuous operations), emissions characteristics, control device applicability and costs, safety, and opportunities for pollution prevention. The Agency anticipates that all of the above criteria, and perhaps others, can be accounted for appropriately by the Agency only after gathering significant information for each listed category of sources during the course of establishing emission standards.

The Agency is aware of the potential disadvantages of listing broad categories of sources. The Agency believes that many of these disadvantages can be adequately overcome in several ways. First, a general description of each listed category is contained in the docket accompanying today's notice (Docket No. A-90-49, Item No. IV-A-55). This description assists in defining what industry sectors, operations, and/or equipment may be included in each listed category. Second, section 112(c) allows revisions to be made to the list, including additions and deletions, in response to public comment, new information, or through petition. In this regard, since the Agency initiates the development of standards years before expected promulgation, industry and the public have opportunities for considerable input to the process and can learn of the Agency's intentions for standards early in the process. Third, because of anticipated revisions to the list, the broad categories on today's initial list will not necessarily represent the pool of sources that will be considered for the purposes of identifying MACT floors for establishing emission standards under section 112(d) or for purposes of determining the need for residual risk standards under section 112(f). In this latter regard, MACT floors may be based on smaller pools of sources in instances where categories on today's list are disaggregated later during standard setting.

The Agency acknowledges that, by listing broad categories, it loses some flexibility in scheduling standards for different operations, or subcategories, within broad categories. The reason for this, as pointed out by several commenters, is that section 112(d) does not allow the Agency to distinguish among classes, types, and sizes of sources within a category where such action would lead to a delay of the

compliance date for any source within the broad category. Hence, once a broad category is initially defined, the Agency is obligated to establish standards for the entire category according to the schedule developed under section 112(e), regardless of how many classes, types, and sizes of sources are subsequently defined under that broad category.

While the Agency may not define subcategories within a category if such subcategories would result in a delay in compliance with standards, the Agency may, at its discretion, establish standards for listed categories or subcategories within a listed category sooner than scheduled under section 112(e). This option gives the Agency scheduling flexibility in a manner consistent with section 112(d)(1) and enables the Agency to consider broader categories for establishing standards and determining compliance. In this regard, the Agency may aggregate, into a single category on any revised list, categories or subcategories which have been disaggregated on the initial list. This may be done for the purpose of setting a single emission standard for the aggregated category. This would not result in the delay of the compliance date of any listed category.

The Agency also has the authority, under section 112(i), to establish compliance dates for existing sources up to 3 years following the effective date of any emission standards. This authority also provides some scheduling flexibility if the Agency decides to disaggregate a category of sources into subcategories.

The Agency acknowledges the existence of overlap in some categories on today's list. For example, synthetic organic chemical manufacturing is listed as a category, but so are process heaters and industrial process cooling towers, which can also be found on the premises of chemical manufacturing facilities. To avoid confusion in the regulatory schedule (required under section 112(e)) due to any such overlap in coverage, and to avoid confusion when establishing standards, a footnote has been added to today's list stating that "all listed categories are exclusive of any specific operations or processes included under other categories that are listed separately." This strategy allows the Agency to schedule the establishment of standards for overlapping categories at different times, at the Agency's discretion, based on the criteria for scheduling in section 112(e). Hence, in the above example, the Agency would have the discretion to schedule the promulgation of standards for process heaters and industrial

process cooling towers separately from all other operations covered under the category of synthetic organic chemical manufacturing.

#### Consistency With Section 111 and Part C

Several commenters noted that section 112(c)(3) requires that to the extent possible, the categories and subcategories listed under (section 112(c)) shall be consistent with the list of source categories established pursuant to section 111 and Part C of the CAA. One commenter mentioned that both major and area sources, per the language in section 112(a), are stationary sources that have the same meaning as such term has under section 111, i.e. any building, structure, facility or installation which emits or may emit any air pollutant. The latter commenter contended that this definition of stationary source excludes some operations (e.g., certain applications of architectural paints and coatings) which do not conform to this definition. One commenter noted that categories defined under section 111 and part C represent a "high order of aggregation," and therefore, in order to be consistent with these other parts of the CAA, today's list should not identify overly "fine-grained" categories of sources. Conversely, another commenter contended that the listing under section 111 has no relevance since there is no differentiation between major and area sources.

In response to these comments, the Agency reviewed the categories of sources established pursuant to section 111 and part C, along with many other data bases (see section II), when developing the initial list in today's notice. Many of the categories of sources in section 111 and part C are included on today's list. Some categories in section 111 and part C are not on today's list because the Agency did not have reasonable evidence that they: (1) Are categories of major sources, or (2) are categories of area sources which present a threat of adverse health or environmental effects warranting regulation under section 112. In general, the level of aggregation of categories on today's list is consistent with that level inherent in section 111 and part C.

The categories of sources on today's list are generally consistent with the definition of stationary sources in section 111. The Agency interprets this definition to include a wide variety of operations and activities that emit HAP's, including categories of stationary sources that emit fugitive emissions. No categories of mobile sources are included on today's list.

#### Consistency With Categorization Under Existing Clean Air Act (CAA) Standards

Several commenters contended that the Agency, in listing categories of sources under section 112(c), needs to consider adopting categories consistent with those already established under existing CAA regulations. Specifically, these commenters contended that today's list should conform to existing categories subject to the Agency's new source performance standards (NSPS), (40 CFR part 60), or in the Agency's control techniques guidelines (CTG's) for establishing reasonably available control technology (RACT). The rationale given was that this consistency would avoid confusion, unnecessary costs, and dislocation within the affected industries, and provide uniformity with the applications of the rules for the prevention of significant deterioration (PSD), NSPS, and nonattainment regulations. The commenters argued that the categories defined in setting NSPS and CTG's demonstrate reasonable subdivisions of categories already identified by the Agency as necessary for establishing appropriate controls for dissimilar processes. Hence, the commenters contend that this same level of categorization should be preserved on today's list and considered as a basis for promulgating standards under section 112(d).

In response, the Agency agrees that it is appropriate, when establishing standards for categories of sources on today's list, to consider categories of sources already defined under existing statutes, particularly categories regulated under the CAA. The Agency intends to consider consistency with categories subject to existing standards as one of many criteria to be considered when revising today's list prior to the establishment of emission standards under section 112(d).

#### Consistency With Clean Water Act Categorization Process

Several commenters suggested that the Agency should use, as a starting point, categories of sources identified for effluent limitation guidelines under the Clean Water Act (CWA). The commenters contended that the lessons learned in the source categorization process under the CWA underscore the importance of identifying appropriate categories of sources for which specific emissions standards may need to be developed.

When compiling today's initial list, the Agency did not adopt the categories of sources identified under the effluent

limitation guidelines under the CWA. This decision was made for two reasons. First, the Agency made the decision not to define overly narrow categories in this initial list (see earlier discussion in section III). Second, the Agency is not certain, at this time, whether categories, identified for purposes relating to water effluent standards, would be appropriate for establishing air standards. Nevertheless, the Agency intends to consider the category definitions use in setting effluent guidelines when subsequently revising today's initial list and when developing emission standards.

#### B. Listing of Categories of Area Sources

Section 112(c)(1) of the CAA Amendments of 1990 requires the Agency to publish a list of all categories of major sources and area sources. This requirement for listing categories of area sources is modified in section 112(c)(3) with language stating: the Administrator shall list each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section.

Section 112(c)(3) also requires that the Agency shall, not later than 5 years after the date of enactment of the CAA Amendments of 1990 and pursuant to section 112(k)(3)(B), list categories of specific HAP's presenting a health threat in urban areas. Section 112(c)(3) further requires that, within 10 years after enactment of the CAA Amendments, the Agency must ensure that categories of certain area sources are subject to regulation, according to emission and risk reduction criteria prescribed in sections 112 (c) and (k). The categories of area sources on today's initial list of categories of area sources do not constitute completion of this requirement.

There are other requirements in Section 112 that may directly or indirectly result in the listing and promulgation of standards for categories of area sources. Section 112(c)(6) requires, by 1995, the listing of categories of sources of specific pollutants (alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin), assuring that sources accounting for 90 percent or more of the aggregate emissions of each pollutant are subject to standards within 10 years of enactment of the CAA Amendments. Section 112(k) requires the listing of categories of area sources

as part of a national strategy to reduce emissions of not less than 30 HAP's and to achieve a reduction in cancer incidence of not less than 75 percent. Studies or analyses performed as part of the Great Lakes and Coastal Waters program under section 112(m), or as part of other studies under section 112 involving mercury emissions, oil and gas wells and pipeline facilities, hydrogen sulfide, and hydrofluoric acid, may all potentially result in the listing of additional categories of area sources at some later date.

#### Alternative Approaches for Listing Categories of Area Sources

In the draft preliminary list (56 FR 28548), many categories of area sources were listed and no distinction was made between categories of major and area sources. The Agency solicited comments on three approaches under consideration for addressing categories of area sources on today's list:

1. Constrain the list to include only categories of major sources and categories of area sources that are sufficiently well characterized to permit a finding of threat of adverse effects. Additional categories of area sources would be subsequently added at some later date when sufficient data were gathered to make a finding of threat of adverse effect.

2. Make an interim finding that all categories of area sources should be listed by virtue of any emissions of HAP's, but later delete any categories determined to be inappropriately listed, using the source category deletion process in section 112(c)(9)(B).

3. Develop a finding of threat of adverse effects that is based on limited available data that could be applied to all identified categories of area sources on the preliminary draft list. This finding would be less rigorous than the first approach due to data limitations and available time. This approach would result in a more comprehensive list than envisioned in the first approach.

Many comments were received on the approach that should be taken for including categories of area sources on today's list. The overwhelming majority of commenters, particularly industry representatives, favored the first approach cited above requiring a detailed finding of threat of adverse effects before listing a category of area sources. Many commenters contended that the language of section 112(c) clearly requires such a finding. Many of these same commenters further contended that Congress clearly did not intend a listing approach similar to the second or third options listed above. These commenters cited as evidence the

requirement, both under sections 112(c) and 112(k), for an area source program and for specific reductions in area source emissions and associated cancer incidence only after considerable study. Furthermore, if no finding or a less rigorous finding were utilized for listing categories of area sources, these commenters asserted that the Agency and potentially regulated sources would be overwhelmed with rigid regulatory obligations bearing little relation to HAP emissions, exposures, or risks. Moreover, these commenters asserted that this course of action might result in the development and evaluation of many unneeded and onerous petitions to delete categories of sources.

Several commenters supported the second approach cited above wherein all categories of area sources are listed based on any level of HAP emissions. The rationale given by the commenters was that this approach would ensure that all categories of area sources would ultimately be examined before deletion from the list.

Several commenters suggested considering a *de minimis* emission cutoff so that very small sources within a category would not be subject to standards. Such a *de minimis* level could be defined specifically for each category of area sources or defined generically for all categories of area sources. The purpose of this, per the commenters, would be to assure that industry and Agency resources are not expended on sources that pose negligible risk to human health or the environment.

In response to these comments, the Agency agrees that the language of section 112(c)(3) clearly requires that a finding be made of threat of adverse effects to human health or the environment warranting regulation under section 112 in order for a category of area sources to be listed. Hence, the Agency has removed all categories from today's list for which: (1) The available information indicates that the category contains only area sources, and (2) the Agency has insufficient information at this time to make a finding of threat of adverse effects warranting regulation. The Agency has listed today a number of categories of area sources for which the Agency has adequate information to make a finding of threat of adverse effects warranting regulation under section 112. A finding of threat of adverse effects for these listed area source categories is presented in Section IV in today's notice.

Regarding the commenter's recommendation that the Agency consider *de minimis* levels, the Agency

has the discretion, when establishing standards, to distinguish among classes, types, and sizes of sources within categories in setting standards under section 112(d)(2). The Agency shall consider costs and non-air quality health and environmental impacts and energy requirements. In addition, the Agency may set generally available control technology (GACT) standards for area sources under section 112(d)(5). The Agency considers this discretion sufficient to avoid establishing unwarranted and inappropriate emission standards for very small emitters.

#### Applicability of Emission Standards to Categories of Major and Area Sources

The Agency identifies a category of major sources as one characterized either by the presence of at least one major source in the category, based on the HAP emission threshold defined in section 112(a), or by the common association of sources in the category with major sources. Because of this, all sources in many listed categories of major sources may not be major sources, and some will be area sources. It is the Agency's intent that if no finding of threat of adverse effects warranting regulation is made, then only major sources in a listed category are subject to regulation under section 112. A footnote accompanies the list of categories of major sources in today's list indicating that only major sources within any category shall be subject to emission standards under Section 112 unless a finding is made, for the area sources in a category, of threat of adverse effects to human health or the environment warranting regulation under Section 112.

In certain cases the Agency has determined, or may determine during the standards development process, that the area sources in a listed category of sources warrant regulation under section 112. In such cases, the Agency may make a finding of threat of adverse effects and add these categories of area sources to the list. As an alternative, the Agency may establish a lesser quantity emission rate for some or all HAP's, under section 112(a), which could have the effect of enabling the Agency to list certain categories as major sources that only contained area sources before the establishment of lesser quantity emission rates.

#### Alternatives for Making a Finding of Threat of Adverse Effects

Most commenters contended that a finding of threat of adverse health or environmental effects is necessary under the language of Section 112(c)(3);

however, few comments were received on the specific nature of the finding. One commenter suggested using the deletion criteria in section 112(c)(9)(B) as the basis for this finding. The rationale for this comment is that, because those same criteria must be used by a petitioner to demonstrate that a category of sources should be deleted, they should be used to add categories of area sources. For example, since a petitioner would have to demonstrate that no source in a category caused a cancer risk exceeding one in a million to the maximally exposed individual in order to have a category of sources deleted from the list, the commenter argued that the Agency should have to show, conversely, that at least one source in a category exceeded this same risk level in order to demonstrate a threat of adverse health effects and list a category of area sources. In response to this comment, the Agency interprets the broad language of section 112 as allowing risk and other factors to be assessed in determining if a threat of adverse effects exists warranting regulation under section 112.

The Agency's criteria for area source findings, and the findings for each area source category included on today's list, are presented in section IV later in this notice.

#### C. Data Base Quality

Many comments were received on the quality of the data base used in developing the preliminary draft list published on June 21, 1991 (56 FR 28548). Most commonly, the commenters identified particular aspects of the data base that they felt were inadequate for listing many categories of sources.

Many commenters indicated that the Agency had inadequate data to demonstrate that at least one source in many categories was, in fact, a major source. In this regard, many commenters argued that the Agency needs to demonstrate the existence of at least one major source in a category before that category could be listed as a category of major sources.

In response, the Agency agrees that, in order to be listed as a category of major sources: (1) There must be at least one major source in that category, (2) or, as discussed in section III.A of today's notice, sources in the category of concern must commonly be located on the premises (i.e., within the contiguous area under common control) of a major source, as defined in section 112(a). Hence, when reviewing the data base used to develop the preliminary draft list, in light of comments received in this regard, the Agency considered the adequacy of the data showing the

existence of at least one major source in each category or the common association of a category with major sources. Where reasonable evidence was available suggesting that these criteria are met, that category was included as a category of major sources on today's list. In many instances, the Agency sought out additional data from the Agency's TRIS and other internal Agency sources to confirm the existence of a major source in each listed category of major sources or the common location of a category on the premises of major sources.

As discussed in section II in today's notice, species profiles were used as an indicator of HAP emissions when compiling the preliminary draft list. These profiles have quality rankings ranging from "A" to "E," with "A" reflecting the best profile quality and "E" reflecting the poorest profile quality. Many comments were received concerning the use of species profiles with lesser quality for estimating HAP emissions. At the outset, profiles having "E" quality rankings were not used at all by the Agency because of insufficient quality. Some commenters suggested not using "D" ranked profiles, which were based on measured emissions from a single source or engineering calculations from more than one source. Some commenters suggested only using the highest quality species profiles that are ranked "A." Some commenters pointed out that particular species profiles, no matter the quality ranking, were inapplicable to the category to which they were applied.

In response to comments relating to species profiles, the Agency continues to believe that species profiles are an appropriate tool for identifying sources of HAP emissions and for estimating HAP emissions, when applied to particulate and volatile organic matter emissions. Hence, profiles having quality rankings of "A" through "D" were still considered in preparing today's list, with several qualifications. First, the Agency agrees that some species profiles were inappropriately applied to some categories on the preliminary draft list. Any categories that were included on the preliminary draft list, based solely on inappropriate profiles, were not included on today's list. Second, all categories on the preliminary draft list, regardless of profile quality ranking, were reviewed before being retained on today's list. Some of these categories are not included on today's list because the Agency could not verify the existence of at least one major source within the categories or the common location of the

categories on the premises of major sources.

*D. Consistency With Section 112 and Section 129 Provisions Relating to Specific Categories of Sources*

**Listing of Electric Utility Steam Generating Units**

Many commenters contended that electric utility steam generating units should not be listed because of provisions under section 112(n)(1) requiring the Agency to perform a study of the hazards to public health from these units. Section 112(n)(1) further states that the Agency shall regulate these units under section 112 only if the Agency finds such regulation appropriate and necessary after considering the results of the study.

Some commenters suggested various reasons for listing electric utility steam generating units on today's initial list. These commenters stated that section 112(n)(1) does not preclude listing utilities. Only regulation of electric utility steam generating units is precluded before the Agency reviews the results of the requisite electric utility study. Other commenters also raised a fairness issue. These commenters contended that electric utility steam generating units should certainly be listed if smaller combustion units had to be listed and subject to standards. Some of these same commenters suggested, as an alternative, that non-utility combustion units should be included in the utility study, and not listed until the results of utility study were available.

In response to these comments, the Agency agrees that a study of hazards from electric utility steam generating units is required before regulating these units. Given this requirement, the Agency sees little benefit in listing these units unless this study demonstrates significant public health hazards, warranting regulation. Hence, electric utility steam generating units, as defined in section 112(a)(8), are not included on today's initial list of categories of major and area sources. The Agency has initiated the study of these units, as required under section 112(n)(1).

In response to comments suggesting that the Agency delete non-utility boilers from today's list, the Agency does not have the authority under section 112 to exclude other combustion units (except for certain solid waste incineration units, as described in the following subsection). The provisions of section 112(n)(1) only apply to electric utility steam generating units, as defined in section 112(a)(8). Moreover, the Agency has determined that several categories of non-utility boilers and

units not meeting the definition of an electric utility steam generating unit are categories of major sources and are thus required to be included on today's list.

**Listing of Solid Waste Incinerator Units**

The term solid waste incineration unit, under section 129(g)(1), means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Section 129(h)(2) states that no solid waste incineration unit subject to performance standards under (section 129) and section 111 shall be subject to standards under section 112(d) of this Act. The Agency interprets section 129(h)(2) to preclude the inclusion on today's list (or any revision of this list) of solid waste incineration units combusting municipal waste, hospital waste, medical waste, infectious waste, commercial or industrial waste. The rationale for this is that section 129(a) specifically requires the Agency to promulgate standards for units combusting these particular wastes under section 111 and section 129. The Agency interprets section 129 as not requiring standards to be promulgated for sewage sludge incineration units under section 129, so these units are included on today's list.

Section 129(g)(5) states that an incineration unit shall not be considered to be combusting municipal waste for purposes of section 111 or (section 129) if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste. The Agency interprets this as allowing standards to be established for fuel combustion categories on today's list that combust up to 30 percent municipal waste. Today's list does not identify specific fuels or fuel mixtures associated with categories of fuel combustion.

Provisions in section 129(g)(1) exclude certain other categories of combustion from inclusion as solid waste incineration units. Excluded are metal recovery facilities (including primary or secondary smelters), qualifying cogeneration facilities burning homogeneous waste (such as tires, used oil, but not including refuse-derived fuel), certain air curtain incinerators, and incinerators permitted under section 3005 of the Solid Waste Disposal Act (Pub. L. 94-580). Any such combustion units are subject to listing under Section 112(c) if all other listing criteria in Section 112 are met. Of these categories, today's list includes several categories of smelters and hazardous waste incinerators.

No solid waste incineration units are included on today's list as categories of area sources.

A number of commenters agreed with the Agency's earlier position that various types of solid waste incinerators should not be included on today's list of categories because of the exclusion in section 129. As stated above, the Agency has not changed this position for most types of incineration in this notice.

Several commenters argued that sewage sludge incinerators should not be listed because they are already regulated under the CWA and by NSPS and NESHAP's. In response, the Agency does not consider sewage sludge incineration units to be covered under Section 129, so it has the authority to list and set standards for these units under Section 112. The Agency does not have the discretion to omit this category because of existing regulations under the CWA or existing NSPS. Moreover, section 112(c)(4) gives the Agency the authority to list any category of sources previously regulated by NESHAP's before the CAA Amendments of 1990.

**Listing of Research Facilities**

The Agency received two comments regarding the listing of research facilities under section 112(c)(7). Both commenters urged the Agency to recognize the unique qualities of research laboratories as expressed in section 112. Specifically, section 112(c)(7) requires the Agency to establish a separate category covering research or laboratory facilities, as necessary in order to assure the equitable treatment of such facilities.

The preliminary draft list of categories of sources did not include a category for research facilities or laboratories. At the time of publication of the draft list, the Agency had insufficient information to list research facilities as a category of major sources. The Agency did not receive, through public comment, any specific emissions data that support the addition of a category for research facilities. Due to this lack of evidence, the Agency did not add research facilities or laboratories to today's initial list of categories of sources.

**Listing of Boat Manufacturing**

The Agency has identified major sources of HAP emissions in the category of boat manufacturing, and has added boat manufacturing as a category of major sources on today's list.

Section 112(c)(8) of the CAA requires the Agency to list boat manufacturing as a separate subcategory, when establishing standards for styrene. However, as explained earlier in today's

notice, the Agency has interpreted the terms "subcategory" and "category" to be interchangeable in the context of today's initial list. Hence, boat manufacturing has been listed as a category of major sources. This meets the intent of the CAA that boat manufacturing be considered separately from any other category when establishing standards.

#### Listing of Radionuclide Emitters

The Agency received several comments on the listing of radionuclide emitters. The commenters noted that the Agency had omitted all categories of radionuclide emitters from the preliminary draft list and suggested the addition of underground and surface uranium mines, Department of Energy (DOE) facilities, as well as facilities already licensed by the Nuclear Regulatory Commission (NRC).

Categories of radionuclide emitters are not included on today's initial list because of several provisions in Section 112. At the outset, the Agency notes that no source of radionuclide emissions meets the major source threshold for HAP's. Section 112(a)(1) allows the Agency to define criteria for differentiating between major and area sources of radionuclide emitters that are different from the weight-based thresholds established for other HAP's. At this time, the Agency has not decided how to define these different criteria. Hence, because categories of major and area sources of radionuclide emissions are not differentiated at this time, and cannot be differentiated based on the 9.07/22.7 Mg/yr (10/25 tpy) threshold in section 112(a) or any existing lesser quantity emission rates, the Agency considers their inclusion on today's list inappropriate. Categories of radionuclide emitters may be added to the list at a later date.

Section 112(d)(9) authorizes the Agency not to regulate, under section 112, emissions from facilities licensed by the NRC if the Agency first determines by rule that the regulatory program implemented by the NRC provides an ample margin of safety to protect public health. At this time, the Agency is engaged in a variety of information gathering and rulemaking activities to determine whether the NRC programs are sufficient to provide an ample margin of safety. For instance, the Agency has proposed to rescind regulatory NESHAPS for nuclear power reactors and non-operational uranium mill tailing disposal sites licensed by NRC and is gathering information as to whether NESHAPS are necessary for the remaining NRC licensees. Hence, no categories of sources regulated by the

NRC are listed on today's list because of radionuclide emissions. The Agency will decide whether or not to add any NRC-licensed categories once sufficient information has been gathered.

Section 112(q)(2) states that no standard shall be established under section 112, as amended, for radionuclide emissions from elemental phosphorous plants, grate calcination elemental phosphorous plants, phosphogypsum stacks, or any subcategory of the foregoing. Under section 112(q)(2), these source categories continue to be governed by the previous version of section 112. None of these categories has been listed due to emissions of radionuclides.

Section 112(q)(3) gives the Agency the discretion to regulate radionuclide emissions from: (1) Non-DOE facilities which are not licensed by the NRC, (2) coal-fired utility and industrial boilers, (3) underground and surface uranium mines, and (4) disposal of uranium mill tailings piles. These source categories are subject to NESHAPS and general rulemakings under the previous version of the CAA. The Agency has not listed any of these categories of sources due to their radionuclide emissions on today's list.

#### Listing of Coke Ovens

The Agency received few comments regarding the listing of coke ovens. The CAA Amendments, under section 112(d)(8), instruct the Agency to promulgate regulations establishing emission standards for coke oven batteries. In response, the Agency listed several categories of coke oven operations in the preliminary draft list under the industry group "ferrous metals processing."

#### Listing of Publicly Owned Treatment Works

In the preliminary draft list, the Agency included a category for "wastewater treatment systems" under the industry group "waste treatment and disposal." This category included both publicly owned treatment works (POTW's) and industrial waste water treatment plants.

Many commenters argued that the category "wastewater treatment systems" was too broad to address realistically the wide variation in existing facilities and, at a minimum, should be divided into two categories: POTW's and industrial waste water treatment plants. In addition, many commenters argued that this broad category overlapped with industry categories listed elsewhere. For example, the broad categories listed in the industry group "production of

synthetic organic chemicals" already encompass wastewater treatment systems as well as many other operations such as process vents and equipment leaks.

In response to these comments, the Agency has eliminated the category "wastewater treatment systems." The Agency agrees that industrial wastewater treatment plants are logically covered under the respective industry groups on today's list, and do not need to be listed separately.

Two provisions in Section 112 affect the listing of POTW's. Section 112(e)(5) requires the Agency to promulgate standards for POTW's, pursuant to section 112(d), not later than 5 years after the date of enactment of the CAA. Section 112(n)(3) states that the Agency may provide for control measures that include: (1) Pretreatment of discharges causing HAP emissions or (2) process or product substitutions or limitations that may be effective in reducing such emissions.

The Agency has included a category of "POTW emissions" on today's list. The Agency has the discretion, under section 112(n)(3), to conduct studies to characterize POTW emissions and to demonstrate control measures, considering alternatives involving pretreatment of discharges and process or product substitutions or limitations. The Agency intends to conduct studies to characterize HAP emissions from industries discharging to POTW's and to identify industrial, commercial and residential discharges that contribute to such emissions. The Agency has the authority, under section 112(n)(3), to consider the efficacy of regulations involving pretreatment of discharges. When such information is obtained, the Agency will add to the source category list, if necessary, to insure regulation of POTW emissions.

#### Listing of Oil and Gas Wells and Pipeline Facilities

The Agency received numerous comments regarding the category "oil and gas production" in the preliminary draft list. The commenters stated that based upon section 112(n)(4), the Agency had erroneously included oil and gas production wells in the oil and gas production category. Commenters generally urged the Agency to delete production wells as either a category of area or major sources.

The Agency agrees with the commenters that the CAA Amendments mandate certain limitations regarding the listing of oil and gas production wells. Section 112(n)(4) limits the Agency's ability to list oil and gas wells

(and associated equipment) as categories of major or area sources.

Section 112(n)(4)(A) specifically requires that each oil and gas well (and associated equipment), pipeline compressor, and pump station at a source must be considered individually, rather than in aggregate across a common area under contiguous control, to determine whether such units or stations are major sources. The Agency has evidence that certain individual units can exceed the major source threshold. Such units would not be excluded from being a major source under section 112(n)(4)(A).

Section 112(n)(4)(B) requires the Agency to determine that HAP emissions from oil and gas production wells (with its associated equipment), present more than a negligible risk of adverse effects to public health before these categories can be listed as categories of area sources. Section 112(n)(4)(B) further limits any such category to only include sources located in any metropolitan statistical area with a population exceeding 1 million. The Agency has not made such a determination at this time. Hence, oil and gas wells (with its associated equipment), pipeline compressors, and pump stations are not listed as categories of area sources on today's list.

#### *E. Listing of Regulated Categories*

Several commenters questioned the listing of some categories of sources currently regulated under the CAA or another statute. In some cases, various commenters pointed out that certain categories of sources on the draft list are (or will be) controlled by NSPS under section 111, by previously defined NESHAP's under Section 112 before the CAA Amendments of 1990, by CTG's under the CWA, under the Resources Conservation and Recovery Act (RCRA), or under the Federal Insecticide, Fungicide and Rodenticide Act. The commenters contended that "dual regulation" would cause confusion and hardship to the regulated community.

In response to these comments, the Agency has no general discretion, under section 112, to exclude categories of sources from today's list if they are subject to other statutes. Moreover, with a few exceptions, discussed below, the Agency has no discretion to exclude categories that are subject to other CAA standards.

Section 112(c)(4) states that the Agency may, at the Administrator's discretion, list any category previously regulated under this section as in effect before the date of enactment of the CAA

Amendments of 1990. This gives the Agency the discretion to list categories of sources if the Administrator decides that existing NESHAP's are inadequate. However, the "savings provision" under section 112(q)(1) obligates the Agency to review and, if appropriate, revise existing NESHAP's to comply with the requirements of section 112(d) within 10 years.

Section 112(n)(7) obligates the Agency to take into account and be consistent with any regulations under RCRA, also known as the Solid Waste Disposal Act.

The Agency has declined to list categories of radionuclide emitters in light of the CAA statutory provisions, discussed in section III.D of this notice, and because the Agency is still developing the criteria for differentiating between major and area sources of radionuclide emitters. Likewise, as described in section III.D of this notice, the language in section 129(h)(2) precludes the listing of many categories of solid waste incineration units that are subject to standards under sections 111 and 129 of the CAA.

Marine vessel loading and unloading facilities are not listed on today's list because the Agency intends to regulate HAP's as well as emissions of VOC's and other pollutants under authority of section 183(f) of the CAA. Section 183(f) requires that the Agency, in conjunction with the Coast Guard, establish emissions standards for emissions of VOC's and any other air pollutant from loading and unloading tank vessels. Given the Congressional mandate to consult with the Coast Guard and consider safety impacts in developing tank vessel standards, the Agency believes it advisable to address all tank vessel emissions in a comprehensive, multi-faceted manner under section 183(f).

In response to comments regarding "dual regulation," the Agency notes that the establishment of standards under section 112 does not necessarily lead to duplicate regulation. This is because air emission regulations issued under another statute would likely become the basis for MACT floors under section 112, which are defined by evaluating best performing existing sources within any category or best controlled similar sources for new sources.

#### *F. Judicial Review of List*

Section 112(e)(4) states notwithstanding Section 307 of this Act (dealing with administrative proceedings and judicial review), no action of the Administrator listing a source category or subcategory under subsection (c) shall be a final Agency action subject to judicial review, except

that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category.

Therefore, today's list is not a final Agency action and is not subject to judicial review.

#### **IV. Finding of Threat of Adverse Effects for Categories of Area Sources**

As discussed earlier in section III.B of this notice, in order to list categories of area sources the Agency must find a threat of adverse health or environmental effects warranting regulation under section 112. The Agency hereby lists the following categories of area sources for which a finding of threat of adverse effects warranting regulation under section 112 has been made: Commercial sterilizers using ethylene oxide, chromium electroplaters and anodizers, perchloroethylene dry cleaners, halogenated solvent cleaners, and asbestos processing. Additional area source categories may be listed from time to time as sufficient data become available to support a finding of threat of adverse effects warranting regulation under section 112.

Today's list includes some source categories which are listed twice, once for the major sources within the category and once for the area sources. This is necessary because some categories are comprised of both area and major sources. Where categories of area sources are listed, a finding is required of threat of adverse effects warranting regulation under section 112.

The language of section 112 provides limited guidance on the nature of the finding of threat of adverse effects to human health or the environment warranting regulation under (section 112). The term "adverse environmental effect" is defined in section 112(a) as any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(a) contains no concomitant definition of adverse health effect. The area source provisions of section 112(k), however, are closely linked to section 112(c) and state that health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the

role of such pollutants as precursors of ozone or acid aerosol formation.

Moreover, the finding is one of a threat of adverse effect, not a demonstration of the adverse effect, per se.

In the findings accompanying the area source listings in today's notice, quantitative assessments of risk are an important consideration in assessing significant threats of adverse health effects. Quantitative risk assessment, in this context, means the estimation of a mathematical probability of an individual or population being subject to some adverse health effect, such as cancer. The Agency has historically developed assessments of cancer risks, both to maximally exposed individuals and populations, as part of its regulatory actions under section 112. Population risks are expressed in terms of the total number of cancer cases (i.e., cancer incidence) that could be expected to occur in a given time within a prescribed area, considering the exposure of the population within the area to ambient concentrations of toxic air pollutants. Most typically, in these findings, nationwide cancer incidence is expressed on an annual basis (i.e., cases per year). In contrast, a maximum individual "lifetime" risk is expressed as the risk of contracting cancer associated with an exposure for 70 years (an assumed life span) to the maximum, modeled, long-term concentration of the listed HAP's in the proximity of emitting sources. (The findings in today's notice do not demonstrate any threat of adverse environmental effects, only human health effects; future findings may be based on environmental effects as the appropriate information becomes available.)

Section 112(c) of the CAA Amendments of 1990 does not offer a "bright line" test for the Agency to use in making an area source finding. Instead, considering the language cited above, the Agency believes it has discretion to consider a range of health effects endpoints and exposure criteria in making a finding of a threat of adverse effects. In the findings for the listed categories of area sources given later in today's notice, the Agency considers factors such as the number of sources in a category, the quantity of emissions from sources individually or in aggregate, the toxicity of the HAP emissions, the potential for individual and population exposures and risks, and the geographical distribution of sources.

In determining what constitutes a significant threat of adverse effects, the Agency considers the risk criteria developed in the establishment of the benzene NESHAP in light of the DC

Circuit Court's decision on the Agency's vinyl chloride emission standards to be an important precedent (*Natural Resources Defense Council, Inc. v. EPA*, 824 F.2d at 1146 [1987]) (the "Vinyl Chloride" decision). In the September 14, 1989 Federal Register implementing the *Vinyl Chloride* decision (54 FR 38044), the Agency presents an approach for providing for the protection of public health with an ample margin of safety under section 112 in protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level of no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

In the September 14, 1989 Federal Register, the Agency indicates that, as a first step in this process, it considers incidence (i.e., the numbers of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk the EPA believes that even if the MIR (maximum individual risk) is low, the overall risk may be unacceptable if significant numbers of persons are exposed to a hazardous air pollutant, resulting in a significant estimated incidence. Consideration of this factor would not be reduced to a specific limit or range but estimated incidence would be weighed along with other health risk information in judging acceptability.

In the September 14, 1989 Federal Register, the Agency indicates that attention will also be accorded to the weight of evidence of the potential human carcinogenicity or other health effects of a pollutant. The uncertainties, gaps in data, and science policy assumptions associated with any risk measures must also be weighed. As a second step in determining the appropriate level of control, the Agency will examine both these factors above and other relevant factors such as the extent of exposure, the incidence of adverse effect, and the cost of control. The Agency will use these factors in determining whether a regulation provides an ample margin of safety. The Agency believes that consideration of these additional factors is also appropriate in determining whether a category of area sources poses a significant threat of adverse health effects warranting regulation under

section 112. This interpretation, however, does not supersede the statutory requirements of the area source program under section 112(k).

In summary, the Agency will not examine a single parameter or measure for making a finding of threat of adverse effects for the purpose of listing any category of area sources. Instead, in determining that a significant threat of adverse effects exists warranting regulation under section 112, the Agency will look to a collection of parameters and measures involving emissions, toxicities, numbers of facilities, the reasonableness of control measures, population exposures to HAP emissions, individual risks and population incidence. In determining what constitutes a significant threat, the Agency will consider the criteria for determining acceptable risks and an ample margin of safety arising from the establishment of benzene NESHAP's in light of the Vinyl Chloride decision. An important criterion in determining a significant threat is evidence that a category of area sources may pose a cancer risk to the maximally exposed individual(s) in excess of one in 10,000. Another important criterion is evidence that significant cancer incidence may result due to many persons exposed to HAP emissions from a category of area sources, even if the maximum individual risk to any individual is low. In addition, the Agency may consider a number of additional factors as appropriate.

As reflected in its interpretation of the Vinyl Chloride decision (54 FR 38044), the Agency recognizes uncertainties in current estimates of risk based on maximum, modeled concentrations and the use of conservative, upperbound risk assumptions (such as continuous exposures for 24 hours per day for 70 years). The Agency acknowledges that current cancer risk estimates do not necessarily reflect the true risk, but often represent a conservative risk level which is an upperbound that is unlikely to be exceeded. The Agency intends to improve its risk assessment procedures in accordance with guidance from its own Risk Assessment Council and through the risk assessment studies required under sections 112(f), 112(o), and 303 of title III of the CAAA.

Each finding detailed below is based on qualitative and quantitative information demonstrating a significant threat of adverse effects to health or the environment for such categories of sources individually or in the aggregate, as required under section 112(c)(3). Most data used in the area source findings were gathered from published reports. Summary information only is presented

in each finding in today's notice. Information from references supporting today's findings is available in the docket (Docket No. A-90-49, Item No. IV-B-44).

*A. Finding of Threat of Adverse Effects for Category of Commercial Sterilizers Using Ethylene Oxide*

Ethylene oxide is widely used as a sterilant/fumigant in the production of medical equipment and in sterilization and fumigation operations. Current estimates indicate that there are about 190 facilities in the U.S. performing ethylene oxide commercial sterilization. Commercial sterilization is performed by medical equipment suppliers, pharmaceutical manufacturers, spice manufacturers, contract sterilizers, libraries, museums and archives, and laboratories. Emissions of ethylene oxide are estimated at 1.1 million kg/yr (2.4 million lb/yr) from commercial facilities.

The adverse health effects from ethylene oxide are well documented. Numerous studies exist which attest to the health effects from both acute and chronic exposures to ethylene oxide. Headaches, nausea, vomiting, and/or respiratory irritation are common symptoms resulting from acute inhalation exposure to ethylene oxide. Studies of subchronic and chronic exposures indicate that ethylene oxide has serious long-term effects. Plant workers exposed to high levels of ethylene oxide over a 1-week to 3-month periods reported the development of neurological abnormalities and cataracts.

Animal experiments and human epidemiological studies indicate that ethylene oxide is a probable human carcinogen. Animals exposed to ethylene oxide over long periods of time exhibit increased incidence of tumors, including brain neoplasms, and leukemia. Studies of persons occupationally exposed to ethylene oxide indicate the possibility of a significant association between exposure and cancer incidence, for both stomach cancer and leukemia.

The reproductive and teratogenic effects of ethylene oxide inhalation have been examined in laboratory animals. Studies indicate that exposure to ethylene oxide produces maternal toxicity, depression of fetal weight gain, fetal death, and fetal malformation in females and reduced sperm numbers and motility in males. Recent studies on ethylene oxide have also examined the mutagenicity associated with ethylene oxide and the ability of ethylene oxide-induced genetic damage to cause adverse reproductive impacts. Ethylene

oxide has been shown to cause mutations in mammalian cells, both somatic and germ.

Due to the adverse effects associated with ethylene oxide observed in both animals and humans, the Agency is concerned about ethylene oxide emissions as well as the presence of ethylene oxide in the ambient air. Studies have confirmed the presence of ethylene oxide above background concentrations in many areas of the nation, including areas of high population. Many ethylene oxide sterilizers are located near population centers and may pose a threat to the surrounding public.

The Agency has conducted nationwide analyses of emissions, exposures, and cancer risks associated with commercial sterilizers using ethylene oxide. The Agency estimates that as many as three increased cancer cases arise in the U.S. annually from exposure to commercial sterilizers using ethylene oxide. The Agency estimates that the maximum individual lifetime cancer risk associated with any commercial sterilizer is as high as one in 100 ( $1 \times 10^{-2}$ ). Furthermore, about 120,000 persons living in the proximity of commercial sterilizers are estimated to be subject to upper-bound lifetime individual risks possibly in excess of one in 10,000 ( $1 \times 10^{-4}$ ); about 2,300,000 persons are subject to lifetime individual risks possibly in excess of one in 100,000 ( $1 \times 10^{-5}$ ); and about 35,000,000 persons—or about one sixth the entire U.S. population—are subject to lifetime individual risks exceeding one in 1,000,000 ( $1 \times 10^{-6}$ ).

Currently, there are no Federal regulations covering ethylene oxide sterilizer emissions, except Occupational Safety and Health Administration (OSHA) requirements for workplace exposure levels. Sixteen States and Puerto Rico have developed regulations; however, no national regulations currently exist that address all ethylene oxide emissions from commercial sterilizers.

Since there are few commercial sterilizers that exceed 9.07 Mg/yr (10 tpy) of ethylene oxide emissions, they must be listed as categories of area sources in order to be regulated under section 112(d). The Agency hereby finds that the high emission levels, documented exposures, and known and suspected adverse health effects associated with ethylene oxide emissions from commercial sterilizers present a threat of adverse effects to human health. The Agency thus includes this category on the list of categories of area sources on today's list.

*B. Finding of Threat of Adverse Effectives for Categories of Chromium Electroplaters and Anodizers*

The chromium electroplating industry consists of hard chromium electroplaters, decorative chromium electroplaters, and anodizers. Hard chromium electroplating involves coating a base metal, such as steel, with a relatively thick layer of chromium, in order to provide a wear resistant surface. Hard plating is most often used on items such as hydraulic cylinders and rods, zinc die castings, plastic molds engine components, and marine hardware. Decorative plating, on the other hand, usually plates the base metal (i.e., brass, steel, aluminum, or plastic) with a layer of nickel and then a thin layer of chromium in order to produce a bright, wear- and tarnish-resistant surface. Decorative plating is most often used on automotive trim, bicycles, hand tools, and plumbing fixtures. A third type of chromium electroplater, anodizers, uses chromic acid to form an oxide layer on aluminum to provide corrosion resistance. Chromium anodizing is primarily used on aircraft parts and architectural structures that are subject to high stress and corrosive conditions. Although chromium may be used in other operations at metal finishing plants, today's notice only includes those processes that use chromic acid in an electrolytic cell to deposit chromium metal or to form an oxide film on a product.

The chromium electroplating industry is comprised of an estimated 1,540 hard electroplaters, 2,800 decorative electroplaters, and 680 chromic acid anodizers, or approximately 5,000 operations nationwide. These operations vary in size from small shops with only one or two small tanks to large shops with several tanks that are operated almost continuously. Some plating operations are done in stand-alone "job shops," whereas others are done on the premises of larger sources, and are called "captive shops." Although no single electroplating operation emits more than 9.07 Mg/yr (10 tpy) of chromium, electroplaters are estimated to emit 159 Mg/yr (175 tpy) of chromium per year nationwide.

Chromium electroplaters can present an adverse health threat to populations living near the source of emissions. Chromium electroplaters mostly emit the hexavalent form of chromium, Cr (+6), as chromic acid mist, and lesser amounts of trivalent chromium, Cr (+3). Current health effects data suggest that the hexavalent form of chromium is the

most toxic of all chromium compounds. Both human case studies and epidemiological studies attest to the adverse health effects from inhalation of hexavalent chromium. Acute exposure to hexavalent chromium has been shown to cause nasal irritation in workers and other individuals. Intermediate and chronic inhalation exposure to chromium has been reported to cause adverse respiratory tract effects, including irritation and perforation of the nasal mucosa, decreases in lung function, and renal proteinuria. Animal studies of acute organ toxicity also suggest that chromium compounds may produce kidney and liver damage.

The carcinogenic health effects from chromium are also well documented. Hexavalent chromium is considered a Group A carcinogen because there is adequate evidence for its carcinogenicity in humans. Specifically, chronic occupational exposure to chromium has been associated with increased incidence of respiratory cancer in workers. The association of exposure to chromium and the induction of lung cancer is strengthened by the high lung cancer mortality ratios found in various epidemiological studies, the consistency of results across several studies, the increased tumors found in association with increasing doses, and the specificity of the tumor site. The role of trivalent chromium in carcinogenesis is presently unclear.

Reproductive studies on animals also suggest that chromium compounds may have some fetal and maternal toxicity effects. Although conclusive results can not be drawn from the available data, studies suggest that chromium compounds can adversely affect fetal development and male reproduction in experimental animals.

The Agency has developed nationwide emission and population exposure estimates associated with chrome platers and anodizers. Based on this analysis, the Agency estimates that chrome platers and anodizers contribute significantly to the total increased cancer incidence in the U.S. from airborne toxics. Hard chrome platers, decorative chrome platers, and acid anodizers may cause as many as 110 increased cancer cases per year in the U.S. In addition to significant population risks, chrome platers and anodizers contribute significantly to maximum individual cancer risks in the proximity of particular facilities. The Agency estimates that maximum, upper-bound individual risks range from two chances in 100,000 ( $2 \times 10^{-6}$ ) for small acid anodizing plants to five chances in 1,000

( $5 \times 10^{-3}$ ) for large hard plating operations. All estimates of risk in this analysis are based on hexavalent chromium only, and not on trivalent chromium.

An Agency study of Southeast Chicago estimates that chrome platers contribute about one sixth of the total cancer incidence due to all sources of airborne toxics in the study area, including steel mills, road vehicles, and other industrial sources.

An Agency analysis of cancer incidence from air toxic emissions in five large U.S. cities shows that chrome platers contribute about one tenth of the total increased cancer incidence due to all sources of airborne toxics. Extrapolating the cancer rate in the five cities to the U.S. yields an estimate of as high as 90 increased cases per year.

Currently, the only Federal emission regulations for electroplaters are limited to OSHA workplace emission standards, designed specifically to limit worker exposures. Fourteen States have adopted or proposed regulations for controlling chromium emission from electroplaters.

The Agency hereby finds that the overall emissions, exposures, and known and suspected health impacts associated with chromium electroplaters and anodizers present a threat of adverse effects to human health. Based on the finding above, the Agency has included chromium electroplaters and anodizers on today's initial list as categories of area sources.

#### *C. Finding of Threat of Adverse Effects for Category of Commercial Perchloroethylene Dry Cleaners*

A finding of threat of adverse effects for commercial perchloroethylene dry cleaners is presented in a proposed rule to establish emission standards for perchloroethylene dry cleaners (56 FR 64382).

#### *D. Finding of Threat of Adverse Effects for Category of Cleaners Using Halogenated Solvents*

Halogenated solvents are widely used throughout industry to clean the surface of metal parts, electronic components, and other nonporous substrates. The cleaning machines that use halogenated solvents are categorized as one of three types: Cold cleaners, open top vapor cleaners (OTVC's), and in-line or conveyorized cleaners. Machines, including maintenance cleaners, that use petroleum distillate type solvents are not included in this category of area sources at this time. The five largest industry users of halogenated solvents for cleaning, by Standard Industries Classification (SIC) Code, are SIC 25

(furniture and fixtures), SIC 34 (fabricated metal products), SIC 36 (electric and electronic equipment), SIC 37 (transportation equipment), and SIC 39 (miscellaneous manufacturing industries). In addition to these industry groups, many non-manufacturing industries (such as railroad, bus, aircraft, and truck maintenance facilities; automotive and electric tool repair shops; automobile dealers; and service stations) also use these solvents for cleaning.

In all of these industries, the most commonly used halogenated solvents are methylene chloride (MC), trichloroethylene (TCE), perchloroethylene (PCE), trichlorotrifluoroethane (CFC-113), and 1,1,1-trichloroethane (TCA). Use of these chemicals is found throughout many industries because they can dissolve many common residues from manufacturing processes, have little or no flammability, and can achieve a high degree of cleanliness on even small parts.

The Agency estimates that there are approximately 100,000 small cold cleaners, 25,000 to 35,000 OTVC's, and 2,500 to 4,000 in-line (cold and vapor) cleaners. Specific emission levels from each type of machine may vary; however, the Agency has estimated that emissions range from 2,500 to 6,000 kg/yr (5,520 to 13,250 lb/yr), depending on the schedule of operation. Most of the solvent losses from halogenated cleaners are to the air.

Due to the high usage and emissions of these cleaners throughout industry, as well as the large number of cleaners, there is a great potential for exposure to the HAP's used as solvents. Two degreasing solvents, CFC-113 and TCA, have also been implicated as causing stratospheric ozone depletion. The TCA has also been shown to be photochemically reactive and contribute to increases in tropospheric ozone levels. Both of these two chemicals, CFC-113 and TCA, will be phased out with other Agency regulations under title VI of the CAA.

The health effects associated with halogenated solvent cleaners are most well documented for MC, TCE, and PCE. Both MC and TCE are considered probable human carcinogens and are classified in Group B2, while PCE is still under review.

Evidence indicating the carcinogenicity of MC is available through animal studies. Animal inhalation studies on MC have shown significant increases in liver and lung adenomas and carcinomas in both males and females. Other animal studies have

indicated that exposure to elevated levels of MC can cause benign mammary tumors. Based upon this available animal evidence, the Agency has determined that MC is a probable human carcinogen. In addition to these adverse effects, short-term exposure to MC has been known to cause impairments in central nervous system (CNS) functioning. Case reports of exposure to MC have shown that humans exposed to MC exhibited narcosis, irritability, analgesia, and fatigue.

Both PCE and TCE are moderately toxic substances that appear to target the CNS, causing dizziness, headaches and slowing of mental activity. Over longer periods of exposure, these adverse effects may also be seen in the liver and kidneys as well as the eyes and upper respiratory tract. The carcinogenic effects from both these chemicals has also been investigated, mostly through animal experiments. Results of TCE tests indicate that inhalation may result in the formation of renal tumors. Other TCE studies suggest that inhalation is fetotoxic and may cause litter resorption and reduced fetal body weight.

An Agency analysis has been conducted of nationwide exposures, individual lifetime risks, and population incidence from halogenated solvent cleaners emissions. This analysis estimates that as many as six increased cancer cases are attributable to halogenated solvent cleaners, annually, in the U.S. This study also suggests that upper-bound maximum individual lifetime risks in the proximity of these cleaners range from as high as one in 1,000,000 ( $1 \times 10^{-6}$ ) to one in 10,000 ( $1 \times 10^{-4}$ ). Nationally, the maximum individual risk near a large facility with multiple conveyorized cleaners is as high as five in 10,000 ( $5 \times 10^{-4}$ ).

Based upon the evidence presented, the Agency finds that cleaners using halogenated solvents present a threat of adverse impact to human health or the environment. The Agency therefore adds them to the categories of area sources on today's initial list.

#### *E. Finding of Threat of Adverse Effects for Category of Asbestos Processing*

The Agency is hereby listing one category of asbestos-related sources: Asbestos processing. Asbestos processing includes asbestos milling, manufacturing, and fabrication. Products that are manufactured or fabricated using asbestos include, but are not limited to, textiles, papers and felts, friction materials, cements, vinyl-asbestos floor tiles, gaskets and packings, shotgun shell wads, asphalt

concrete, fireproofing and insulating materials, and chlorine.

Information on asbestos emissions has been limited by the lack of an appropriate measuring method. Therefore, engineering estimates of emission have been made from other available information, when appropriate, including process data and worker concentration data. Under the current NESHAP, emissions from asbestos processing are estimated at 1,020 kg/yr (2,240 lb/yr) given full compliance with the current NESHAP. This includes all emissions from milling, manufacturing, and fabricating. Due to the potency of asbestos and the well documented health hazards (described below), the Agency is concerned about these emissions even though exact amounts have not been quantified.

The health effects associated with exposure to asbestos are well documented. Numerous occupational exposure studies, supported by animal studies, clearly indicate that asbestos is a human (Group A) carcinogen. The major impacts associated with asbestos inhalation are lung cancer and mesothelioma. Studies have confirmed that death from lung cancer and mesothelioma is proportional to the cumulative exposure (duration times the intensity). Studies also indicate that asbestos is linked to gastrointestinal cancers, although these occur at a lower rate than that seen for lung cancer.

The Agency has completed an analyses of cancer incidence and maximum individual cancer risks associated with asbestos emissions from the category of asbestos processing. Available Agency estimates of maximum lifetime cancer risks in the vicinity of processing operations are based on early emission estimates that have since been revised to reflect more recent and improved information. However, estimates of maximum risk derived using these earlier estimates of emissions were evaluated and, for asbestos processing, appear to still be applicable. These available data suggest that upper-bound maximum individual lifetime risks are about two in 1,000 ( $2 \times 10^{-3}$ ) for production in the manufacturing sector.

Regulations to control workplace exposures and/or emissions from asbestos have been established by OSHA, the Mine Safety and Health Administration (MSHA), EPA, and States. The most recent Agency NESHAP, promulgated November 20, 1990, amended the earlier NESHAP to enhance enforcement and promote compliance with the current standards without altering the stringency of existing controls. Since the initial

promulgation in 1973, many States have adopted more stringent requirements than the Agency; therefore, no uniform standard now exists. The Agency intends to consult and coordinate with OSHA and other regulatory agencies to establish regulations that are more compatible and consistent than current regulations, as well as easier to understand. This should improve compliance with all regulations.

Based on emission and risk information discussed previously, and the known health effects of asbestos, the Agency has determined that asbestos processing presents a threat of adverse effects to human health. Emissions data from this category indicate that no sources emit greater than 9.07 Mg/yr (10 tpy) of asbestos. Based on the finding above, the Agency hereby includes the category of asbestos processing on today's list.

In addition to the finding of threat of adverse effects given above, the Agency has additional authority to list and establish standards for the category of asbestos processing under sections 112(c)(4) and 112(q)(1). Section 112(c)(4) gives the Agency the authority to list any category or subcategory of sources previously regulated under Section 112 as in effect before enactment of the CAA Amendments of 1990. Section 112(q)(1) obligates the Agency to review and, if appropriate, revise each standard previously promulgated under Section 112 before enactment, to comply with the requirements of section 112(d), within 10 years after the date of enactment of the CAA Amendments of 1990. Since the category of asbestos processing has a promulgated NESHAP, the Agency exercises its discretion to list this category under the authority of section 112(c)(4) and 112(q)(1).

#### **V. Descriptions of Listed Categories**

Because some of the categories on today's list encompass several industry sectors, operations, and/or types of equipment, the Agency recognizes the importance of describing what is included under each listed category. Hence, descriptions are included in the accompanying docket (Docket No. A-90-49, Item No. IV-A-55) for the purpose of delineating, to the extent currently possible with available data, the potential coverage of each category. The Agency recognizes that these descriptions, like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each

listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category. It is not the Agency's intent that the descriptions, in the docket accompanying today's notice, limit what may be included under each category for the purposes of establishing emission standards either under section 112(d) or, on a case-by-case basis under section 112(j), or for purposes relating to other parts of section 112 involving the definition of source or category of sources.

#### VI. Relationship of List to Definition of Source for Early Reduction

The identification of categories and subcategories of major sources in today's initial list has no bearing whether any particular facility or grouping is a "source" for purpose of the early reduction program under section 112(i)(5) or a major source for purposes of section 112(a)(1). The term "major source" is defined in section 112(a)(1) in such a way that it refers to the emissions occurring from a contiguous area under common control. By contrast, the Agency must identify "categories and subcategories" of major and area sources generically for the purposes of today's initial list and for establishing standards under section 112(d). In most cases, this identification will be made as product or process oriented groupings which will not affect the definition of "source" for purposes of either the early reduction under section 112(i)(5) or the definition of a "major source" under section 112(a)(1). The definition of source in the early reduction program is described in section II.B of the Proposed Regulations Governing Compliance Extensions for Early Reduction of Hazardous Air Pollutants (June 13, 1991, 56 FR 27338).

#### VII. Administrative Requirements

##### A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this initial list of categories of sources. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's initial list.

##### B. Executive Order 12291 Review

Executive Order 12291 requires the Agency to determine whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional

regulatory requirements. This notice was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and written EPA responses are available in the docket.

##### C. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 55 U.S.C. 3501 et seq.

##### D. Regulatory Flexibility Act Compliance

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements.

Dated: July 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS \*

FUEL COMBUSTION			
Category Name			
Engine Test Facilities			
Industrial Boilers *			
Institutional/Commercial Boilers *			
Process Heaters			
Stationary	Internal	Combustion	
Engines *			
Stationary Turbines *			
NON-FERROUS METALS PROCESSING			
Category Name			
Primary Aluminum Production			
Secondary Aluminum Production			
Primary Copper Smelting			
Primary Lead Smelting			
Secondary Lead Smelting			
Lead Acid Battery Manufacturing			
Primary Magnesium Refining			
FERROUS METALS PROCESSING			
Category Name			
Coke By-Product Plants			
Coke Ovens: Charging, Top Side, and Door Leaks			
Coke Ovens: Pushing, Quenching, and Battery Stacks			
Ferroalloys Production			
Integrated Iron and Steel Manufacturing			
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation			
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation			
Iron Foundries			
Steel Foundries			
Steel Pickling—HCl Process			
MINERAL PRODUCTS PROCESSING			
Category Name			
Alumina Processing			

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS \*—Continued

Asphalt/Coal Tar Application—Metal Pipes	
Asphalt Concrete Manufacturing	
Asphalt Processing	
Asphalt Roofing Manufacturing	
Chromium Refractories Production	
Clay Products Manufacturing	
Lime Manufacturing	
Mineral Wool Production	
Portland Cement Manufacturing	
Taconite Iron Ore Processing	
Wool Fiberglass Manufacturing	
PETROLEUM AND NATURAL GAS PRODUCTION AND REFINING	
Category Name	
Oil and Natural Gas Production	
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	
Petroleum Refineries—Other Sources Not Distinctly Listed	
LIQUIDS DISTRIBUTION	
Category Name	
Gasoline Distribution (Stage 1)	
Organic Liquids Distribution (Non-Gasoline)	
SURFACE COATING PROCESSES	
Category Name	
Aerospace Industries	
Auto and Light Duty Truck (Surface Coating)	
Flat Wood Paneling (Surface Coating)	
Large Appliance (Surface Coating)	
Magnetic Tapes (Surface Coating)	
Manufacture of Paints, Coatings, and Adhesives	
Metal Can (Surface Coating)	
Metal Coil (Surface Coating)	
Metal Furniture (Surface Coating)	
Miscellaneous Metal Parts and Products (Surface Coating)	
Paper and Other Webs (Surface Coating)	
Plastic Parts and Products (Surface Coating)	
Printing, Coating, and Dyeing of Fabrics	
Printing/Publishing (Surface Coating)	
Shipbuilding and Ship Repair (Surface Coating)	
Wood Furniture (Surface Coating)	
WASTE TREATMENT AND DISPOSAL	
Category Name	
Hazardous Waste Incineration	
Municipal Landfills	
Sewage Sludge Incineration	
Site Remediation	
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	
Publicly Owned Treatment Works (POTW) Emissions	
AGRICULTURAL CHEMICALS PRODUCTION	
Category Name	
2,4-D Salts and Esters Production	
4-Chloro-2-Methylphenoxyacetic Acid Production	
4,6-Dinitro-o-Cresol Production	
Captafol Production	

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS <sup>a</sup>—Continued

Captan Production
Chloroneb Production
Chlorothalonil Production
Dacthal (tm) Production
Sodium Pentachlorophenate Production
Tordon (tm) Acid Production
<b>FIBERS PRODUCTION PROCESSES</b>
Category Name
Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production
<b>FOOD AND AGRICULTURE PROCESSES</b>
Category Name
Baker's Yeast Manufacturing
Cellulose Food Casing Manufacturing
Vegetable Oil Production
<b>PHARMACEUTICAL PRODUCTION PROCESSES</b>
Category Name
Pharmaceuticals Production
<b>POLYMERS AND RESINS PRODUCTION</b>
Category Name
Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butadiene-Furfural Cotriemer (R-11)
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Elastomers Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Non-Nylon Polyamides Production
Nylon 6 Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS <sup>a</sup>—Continued

Polyethylene Terephthalate Production	
Polymerized Vinylidene Chloride Production	
Polymethyl Methacrylate Resins Production	
Polystyrene Production	
Polysulfide Rubber Production	
Polyvinyl Acetate Emulsions Production	
Polyvinyl Alcohol Production	
Polyvinyl Butyral Production	
Polyvinyl Chloride and Copolymers Production	
Reinforced Plastic Composites Production	
Styrene-Acrylonitrile Production	
Styrene-Butadiene Rubber and Latex Production	
<b>PRODUCTION OF INORGANIC CHEMICALS</b>	
Category Name	
Ammonium Sulfate Production—Caprolactam By-Product Plants	
Antimony Oxides Manufacturing	
Chlorine Production	
Chromium Chemicals Manufacturing	
Cyanuric Chloride Production	
Fume Silica Production	
Hydrochloric Acid Production	
Hydrogen Cyanide Production	
Hydrogen Fluoride Production	
Phosphate Fertilizers Production	
Phosphoric Acid Manufacturing	
Quaternary Ammonium Compounds Production	
Sodium Cyanide Production	
Uranium Hexafluoride Production	
<b>PRODUCTION OF ORGANIC CHEMICALS</b>	
Category Name	
Synthetic Organic Chemical Manufacturing	
<b>MISCELLANEOUS PROCESSES</b>	
Category Name	
Aerosol Can-Filling Facilities	
Benzyltrimethylammonium Chloride Production	
Butadiene Dimers Production	
Carbonyl Sulfide Production	
Chelating Agents Production	
Chlorinated Paraffins Production	
Chromic Acid Anodizing	
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	
Commercial Sterilization Facilities	
Decorative Chromium Electroplating	
Dodecanedioic Acid Production	

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS <sup>a</sup>—Continued

Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Industrial Process Cooling Towers
OBPA/1,3-Diisocyanate Production
Paint Stripper Users
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood/Particle Board Manufacturing
Polyether Polyols Production
Pulp and Paper Production
Rocket Engine Test Firing
Rubber Chemicals Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production
Tire Production
Wood Treatment

**CATEGORIES OF AREA SOURCES <sup>c</sup>**

Asbestos Processing
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating

<sup>a</sup> All categories in Table 1 are categories of major sources unless specifically identified as categories of area sources. Only major sources within any category shall be subject to emission standards under section 112 unless a finding is made, for the area sources in the category, of a threat of adverse effects to human health or the environment warranting regulation under section 112. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

<sup>b</sup> Sources defined as electric utility steam generating units under section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under section 112(n)(1) and subsequent listing and regulation thereof.

<sup>c</sup> A finding of threat of adverse effects to human health or the environment warranting regulation under section 112 has been made for each category of area sources listed in Table 1.

[FR Doc. 92-16260 Filed 7-15-92; 8:45 am]

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# **federal register**

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**Thursday**  
**July 16, 1992**

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## **Part V**

### **Department of the Treasury**

**Office of the Comptroller of the Currency**  
**12 CFR Part 34**

### **Federal Reserve System**

**12 CFR Parts 208 and 225**

### **Federal Deposit Insurance Corporation**

**12 CFR Part 365**

### **Department of the Treasury**

**Office of Thrift Supervision**  
**12 CFR Part 563**

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**Real Estate Lending Standards; Proposed  
Rule**

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 34**

[Docket No. 92-12]

**FEDERAL RESERVE SYSTEM****12 CFR Parts 208 and 225**

[Regulation H; Regulation Y; Docket No. R-0765]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 365**

RIN 3064-AB05

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 563**

[No. 92-284]

RIN 1550-AA56

**Real Estate Lending Standards**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), enacted December 19, 1991, requires the federal banking agencies, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, to adopt uniform regulations prescribing standards for real estate lending. FDICIA defines real estate lending as extensions of credit secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: The risk posed to the deposit insurance funds by such extensions of credit; the need for safe and sound operation of insured depository institutions; and the availability of credit.

In order to implement section 304, the agencies are proposing to establish loan-to-value (LTV) ratio limitations on real estate lending by insured depository institutions. The Board of Governors of

the Federal Reserve System also proposes to establish loan-to-value ratio limitations on real estate lending by bank holding companies and their nonbank subsidiaries. Certain transactions would be excluded from the LTV ratio limitations. Specifically, it is proposed that these limits would not apply to: Loans guaranteed or insured by the U.S. government or an agency thereof, or backed by the full faith and credit of a state government; loans facilitating the sale of real estate acquired by the lending institution in the ordinary course of collecting a debt previously contracted; loans where real estate is taken as additional collateral solely through an abundance of caution by the lender; loans renewed, refinanced, or restructured by the original lender(s) to the same borrower(s), without the advancement of new funds; or loans originated prior to the effective date of the proposed regulation. In addition, the agencies are considering exempting loans involving organizations or projects designed primarily to promote the economic rehabilitation and development of low-income areas. The proposal also includes provisions allowing lending institutions to make a limited amount of real estate loans that do not conform with the proposed LTV ratio limitations.

**DATES:** Comments must be submitted on or before August 31, 1992.

**ADDRESSES:** Office of the Comptroller of the Currency (OCC): Office of the Comptroller of the Currency, Communications Division, 250 E St. SW., Washington, DC 20219, attention: Docket No. 92-12. Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R-0765, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation (FDIC): Comments should

be directed to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F-400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (Fax Number: (202) 898-3838). Comments will be available for inspection at the same address on business days between 9 a.m. and 4:30 p.m.

Office of Thrift Supervision (OTS): Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, attention: Docket No. 92-284. These submissions may be hand delivered to 1700 G Street NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

**FOR FURTHER INFORMATION CONTACT:** OCC: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5170; William W. Templeton, Attorney, Legal Advisory Services Division, (202) 874-5320; Mitchell Stengel, Financial Economist, Banking Research and Statistics, (202) 874-5240.

Board: Roger T. Cole, Assistant Director (202) 452-2618, Rhoger H Pugh, Manager (202) 728-5883, or Todd A. Glissman, Supervisory Financial Analyst (202) 452-3953, Division of Banking Supervision and Regulation; or Scott G. Alvarez, Associate General Counsel (202) 452-3583, or Brian E.J. Lam, Attorney (202) 452-2067, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

FDIC: Robert F. Mialovich, Associate Director, Division of Supervision, (202) 898-6918; Robert Walsh, Examination Specialist, Division of Supervision, (202) 898-6911; Garfield Gimber, Examination Specialist, Division of Supervision, (202) 898-6913; Martha L. Coulter, Counsel, Legal Division, (202) 898-7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

OTS: John C. Price, Jr., Deputy Assistant Director for Policy, (202) 906-5745; Robert Fishman, Program Manager for Credit Risk, (202) 906-5672; William J. Magrini, Project Manager for Credit Policy, (202) 906-5744, Supervision

Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906-7133, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991<sup>1</sup> (FDICIA), enacted December 19, 1991, requires each federal banking agency to adopt uniform regulations prescribing standards for extensions of credit secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: (a) The risk posed to the deposit insurance funds by such extensions of credit; (b) the need for safe and sound operation of insured depository institutions; and (c) the availability of credit. The agencies are to adopt uniform regulations within 9 months of the date of enactment of FDICIA. These regulations are to become effective within 15 months following enactment of FDICIA.

The legislative history of section 304 indicates that Congress desired to curtail abusive real estate lending practices to reduce risk to the deposit insurance funds and to enhance the safety and soundness of financial institutions. Congress considered placing explicit real estate lending restrictions in the form of loan-to-value (LTV) ratio limitations directly into the statute. In the end, however, Congress mandated that the federal banking agencies establish uniform real estate lending standards without specifying what these standards should entail.

To implement the requirements of section 304, the agencies propose to adopt uniform regulations prescribing certain real estate lending standards.<sup>2</sup>

<sup>1</sup> Public Law No. 102-242, 105 Stat. 2236, 2354 (1991); 12 U.S.C. 1828(c); 12 U.S.C. 371(a).

<sup>2</sup> The Board proposes to apply the proposed standards to bank holding companies and their nonbank subsidiaries.

The FDIC and the Board are considering application of the proposed standards not only to insured depository institutions but also to their lending subsidiaries. Under the OCC's existing regulations, provisions of Federal banking statutes and regulations applicable to national banks are generally applicable to their operating subsidiaries and to bank service corporations. 12 CFR 5.34(d)(2) and 5.35(e)(3)(i) (1992). In addition, under section 24(d) of the Federal Deposit Insurance Act, 12 U.S.C. 1831a(d), as of December 19, 1992, subsidiaries of insured state banks will generally be prohibited from engaging in activities that are not permissible for subsidiaries of national banks unless the FDIC

Specifically, the agencies propose to establish an LTV ratio framework for real estate lending. Moreover, in accordance with longstanding safe and sound banking practices and other regulatory requirements, the agencies would expect each real estate extension of credit to be based on proper loan documentation and a recent appraisal or evaluation of the real property financed by the credit, in conformance with the agencies' respective appraisal regulations and guidance.

##### B. Loan-To-Value Ratio Framework

LTV ratios have long been a primary factor used by lending institutions in determining the extent to which an institution is willing to lend on a given real estate parcel or project. The agencies seek comment on whether LTV ratios represent a suitable standard for addressing the risks at which section 304 is aimed or whether some other standard would be more appropriate.

For the purposes of the standards mandated by Section 304, the agencies propose to define the LTV ratio by taking the total amount of credit to be extended and dividing by the appraised value or evaluation of the property, as appropriate, at the time the credit is originated. In situations where the lender does not hold a first lien position, the total amount of credit being extended would be combined with the amount of all senior liens when calculating this ratio. The agencies request comment on this "loan-to-value ratio" definition, including:

(a) The appropriateness of using the appraised value or evaluation of a property, as defined in the proposed regulations, when calculating the ratio;

(b) Whether the definition should take into consideration credit enhancements or other assets pledged as additional collateral in calculating the LTV ratio, and, if so, the types of credit enhancements or other assets that should be deemed acceptable and the way in which the LTV ratio should then be calculated; and

(c) Whether the definition should be applicable to the renewal, refinancing, or restructuring of existing credits, and, if so, how the terms renewal, refinancing, and restructuring should be defined.

The agencies also request comment on two alternative methods of establishing

has determined that the activity does not pose a significant threat to the appropriate deposit insurance fund.

With regard to savings associations, the OTS is considering application of the proposed standards to all savings and loan service corporations and subsidiaries.

an LTV ratio framework for real estate lending: One in which lenders would individually establish LTV ratio limits, within or below a range of supervisory limits prescribed in uniform regulations and subject to supervisory review; and one in which the agencies would prescribe maximum LTV ratio standards for all insured depository institutions in uniform regulations. Comment on all aspects of the proposal is sought.<sup>3</sup> The agencies also ask for comment on whether other real estate lending standards should be adopted including, for example, loan documentation and credit review standards.

##### Alternative 1

##### Individual Lender Loan-To-Value Ratio Standards.

With this approach, the agencies propose to require management of lending institutions to establish prudent lending standards for specific categories of real estate loans, including internal LTV ratio lending limits, that are consistent with safe and sound banking practices under varying conditions. The LTV ratio lending limits would be set by lending institutions within or below ranges of maximum LTV ratios that the agencies propose to establish as follows:

Category of real estate loan	Range of maximum permissible LTV ratios (percent)
Raw land .....	50 to 65
Pre-construction development ..	55 to 70
Construction and land development ..	65 to 80
Improved Property <sup>1</sup> .....	65 to 80
1-to-4 family residential property (owner-occupied) ..	80 to 95 *
Home equity .....	80 to 95 *

<sup>1</sup> Improved property loans include extensions of credit secured by one of the following types of real property: (a) Farmland committed to ongoing agricultural production; (b) non-owner-occupied 1-to-4 family residential property; (c) multi-family residential property; (d) completed commercial property; or (e) other income-producing property that has been completed and is available for occupancy and use.

\* Any portion of a loan exceeding 85 percent LTV should be covered by private mortgage insurance.

Each lending institution would be required to establish maximum LTV ratios for each category of loans within or below the specified range. The agencies would view the low end of each supervisory range as a benchmark

<sup>3</sup> The OTS currently has in place regulations that establish loan-to-value ratios for certain types of real estate loans. See e.g., 12 CFR 545.32(d), 545.33(d), 545.35(c), 563.97. The OTS intends to review its current regulations to ensure that they conform to the real estate lending requirements ultimately promulgated pursuant to this rulemaking and anticipates removal of duplicative or conflicting material. The OTS welcomes comments on the interaction between this rulemaking and its current regulations.

LTV ratio for that category of loan. However, each institution would be permitted to establish a higher maximum LTV ratio, within the supervisory range, for each category of loan based on the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, the institution's capital position, its asset quality, and other appropriate considerations.

After establishing maximum LTV ratios for each category of real estate lending, each lender would be expected to specify criteria that would be used to qualify loans at LTV ratio levels up to the institution's established maximums. In specifying these criteria, the lender should take into consideration individual lending factors, such as the financial strength of the borrower and any guarantor, the debt coverage ratio of the project, credit enhancements, "take out" commitments, and the like. Any portion of 1-to-4 family residential property loans and home equity lines of credit exceeding an 85 percent LTV ratio should, in any case, be covered with private mortgage insurance.

A lending institution should only make a loan at the upper end of the supervisory range of LTV ratios (for that lending category) when significant positive features that would mitigate the higher level of risk are present. For example, for a construction loan, the higher end of the range could potentially be used when the loan meets specified criteria such as a certain level of pre-sales or pre-leases, or if the borrower has obtained a binding "take out" commitment for permanent financing.

Consistent with safe and sound banking practices, each lending institution would be expected to fully document its real estate lending standards, including applicable LTV ratio limits and other underwriting requirements, in its written policies. Such documentation would also be expected to include adequate justification of the LTV ratio limits set by the institution. The agencies also propose that these internal lending standards be approved by the lending institution's directors and be subject to examiner review to determine the institution's conformance with supervisory standards to be established by the agencies.

With regard to this approach, public comments are sought on:

- (a) The appropriateness of the proposed real estate lending categories;
- (b) What ranges of maximum LTV ratios should be established;

(c) What guidelines should be provided to lenders to implement a prudent internal LTV ratio framework;

(d) What criteria examiners should use in assessing the adequacy of LTV ratios used by lenders in light of regulatory guidance; and

(e) The means by which the agencies could ensure appropriate and consistent interpretation of LTV ratio guidance by both lenders and examiners.

#### Alternative 2

##### Uniform Loan-to-Value Ratio Standard.

With this approach, the agencies propose to establish uniform maximum LTV ratios for specific categories of real estate loans as follows:

Category of real estate loan	Maximum LTV ratio (percent)
Raw land.....	60
Pre-construction development.....	65
Construction and land development.....	75 (If certain conditions are met; otherwise, 65%)
Improved property.....	75 (If the credit amortizes; otherwise, 65%)
1-to-4 family residential property (owner-occupied).....	95 (With private mortgage insurance ("PMI"); otherwise, 80%)
Home equity.....	95 (With PMI; otherwise, 80%)

These standards would be prescribed for all lending institutions regulated by the agencies.

With regard to establishing a maximum LTV ratio for each category of real estate loan as defined in the proposed regulation, the agencies request comment on:

(a) The appropriateness of the proposed real estate lending categories; and

(b) The level at which the LTV ratio limit should be set for each loan category.

The agencies also seek public comment on several particular items. For the "construction and land development loan" category, comment is sought on:

(a) The appropriateness of allowing a higher LTV ratio limit when substantial third-party commitments exist that place the lender in a more secure position;

(b) The criteria for determining that substantial third-party commitments exist; and

(c) The percentage of space in a real estate project that should be owner-occupied, pre-sold, or pre-leased to qualify the borrower for preferential LTV ratio treatment.

The agencies also seek comment on whether the maximum LTV ratio applicable to construction and land development loans should differentiate between residential and commercial properties and, if so, how.

For the "improved property loan" category, comment is sought on the appropriateness of implementing a stricter LTV ratio for nonamortizing credits and a level of amortization, if any, that should be required in order to receive preferential LTV ratio treatment.

#### C. Other Considerations Applicable to Both Alternatives

The agencies do not intend to apply this rule to loans to builders and developers that are used for general business purposes (such as payroll and similar expenses) and that are not related to any one project and are not secured by real estate.

Public comment is sought on the following issues not specifically raised in the discussion of the above approaches:

(a) Whether additional quantitative real estate lending standards, such as lending concentration limits and loan maturity limits, should be specified by the agencies in a regulation or policy guidance;

(b) Whether other lending standards should be implemented to enhance financial support provided by the developer in a commercial real estate transaction, such as requiring the developer to provide a legally enforceable guarantee and/or recourse to the developer's other assets; and

(c) Whether real estate developers should be required to inject a specific level of equity upfront into a real estate project (for example, cash, cash equivalents, or a substantial equity position in the underlying real property) relative to the appraised value or evaluation, as appropriate, and, if so, the appropriate level and form of equity that should be required.

With specific regard to owner-occupied, 1-to-4 family residential property loans and home equity loans, comment is requested on:

(a) Whether LTV ratio ranges or limits should be established for each of these lending categories;

(b) Whether individual loans below a given threshold amount should be excluded from LTV ratio requirements, and if so, the level at which this threshold should be set; and

(c) Whether, in addition to private mortgage insurance, other legally-binding guarantees or insurance from financially-responsible third parties should be given credit for supporting the

portion of loans exceeding the specified LTV ratio, and, if so, what types should be permitted.

The agencies desire to accommodate credit needs within the context of safe and sound banking practices. In particular, the agencies recognize that situations may exist where it is considered prudent to extend credit beyond specified LTV ratio limits. Hence, under the text of the proposed regulation, the agencies are considering allowing lending institutions to make real estate loans that do not conform with established LTV ratio limits up to an amount not to exceed 15 percent of the institution's total capital. The agencies would expect nonconforming extensions of credit to be adequately documented, reviewed by senior management of the lending institution, and reported to the lender's board of directors.

The agencies seek public comment on providing exceptions for nonconforming loans. Specifically, for each of Alternatives 1 and 2 separately, the agencies seek comment on:

(a) Whether allowing an exception for nonconforming loans should be considered appropriate;

(b) The level of such an exception, if appropriate;

(c) Whether total capital is an appropriate measure for the exception;

(d) What documentation and review should be considered appropriate for nonconforming credits beyond the normal approval process; and

(e) Whether other prudential requirements or restrictions would be appropriate to limit the risks associated with excepted loans.

To further accommodate credit needs, the agencies seek comment on whether it would be appropriate to phase-in the real estate lending standards when they become effective, by Congressional mandate, in March 1993, and, if so, how they should be phased-in and within what timeframe.

The agencies also propose to exclude certain types of transactions from LTV ratio limitations. Specially, LTV ratio limitations would not apply to:

(a) Loans guaranteed or insured by the U.S. government or an agency thereof, or backed by the full faith and credit of a state government;

(b) Loans facilitating the sale of real estate acquired by the lending institution in the ordinary course of collecting a debt previously contracted;

(c) Loans where real estate is taken as additional collateral solely through an abundance of caution by the lender;

(d) Loans renewed, refinanced, or restructured by the original lender(s) to

the same borrower(s), without the advancement of new funds; or

(e) Loans originated prior to the effective date of the proposed regulation.

With regard to government-guaranteed or insured credits, comment is sought on how partially guaranteed or insured credits should be treated under this exclusion. The agencies request comment on whether the above provision on renewals, refinancing, and restructurings of loans, including the limitation on the advancement of new funds, provides institutions with sufficient flexibility to meet credit demands.

The agencies also request comment on whether the proposed real estate lending standards contain enough latitude to avoid hampering the lending programs that institutions have established to help fulfill their obligations under the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*, particularly those programs designed to provide credit to low and moderate income personal. Some of these programs involve loans with high LTV ratios but with other characteristics that enhance their safety such as government guarantees, public subsidies, charitable foundation support, equity substitutes, assured tenant demand, and the like. The agencies do not wish to restrict these programs, and seek comment on how they may be accommodated within the spirit of the Congressional directive to set general standards for real estate lending. One possibility would be to provide an exemption for extensions of credit involving organizations or projects designed primarily to promote the economic rehabilitation and development of low-income areas. Comment is sought on how such an exemption could be defined in order to prevent inappropriate interpretations.

The agencies request comment as to whether they may distinguish among lending institutions on the basis of the institutions' financial and managerial strength in implementing section 304. In particular, the agencies request comment on whether institutions that qualify as "well capitalized" for purposes of Prompt Corrective Action under section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, should be given additional flexibility in the implementation of the proposed real estate lending standards, and, if so, what the nature of that flexibility should be. Further, the agencies seek comment on whether such flexibility, if deemed appropriate, should differentiate between the following two groups of lending categories, and, if so, in what manner:

(a) Raw land, preconstruction development, and construction and land development loans; and

(b) Improved property, 1-to-4 family residential property, and home equity loans.

The agencies solicit comment on the interaction of this proposed regulation with risk-based capital requirements. In addition, public comment is solicited on all other aspects of the two approaches being considered and the proposed regulation.

Finally, the Board is seeking comment on whether, to what extent, and the manner in which real estate lending standards should be imposed on bank holding companies and their nonbank subsidiaries. In the Board's view, it is not clear by virtue of the text of section 304 whether such standards are applicable to such entities.

#### Regulatory Flexibility Act Analysis

On the basis of the information available, the OCC, FDIC, and OTS independently certify that the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In developing the proposed rule, it was the intent of the agencies to propose prudent standards that are currently used by sound institutions and, as such, would not significantly impact small entities. Nonetheless, the other agencies join the Board in inviting comments on the costs and benefits of the proposed regulation with regard to real estate lending operations at banking organizations, the impact on loan documentation and monitoring, possible reduction in losses on real estate lending, and the availability of credit.

#### Executive Order No. 12291

The OTS and the OCC have preliminarily determined that this proposal does not constitute a "major rule" within the meaning of Executive Order No. 12291. Accordingly, a regulatory impact analysis is not required. The OTS and the OCC will issue final regulations that accomplish the objectives of section 304 of FDICIA without imposing unnecessary costs on the economy. Toward that end, the OTS and the OCC will, in the near future, publish in the *Federal Register* a separate discussion of the costs and benefits of the regulatory approaches outlined in the proposed rule. Commenters are encouraged to take this supplementary analysis into account when providing their comments on this proposed rule.

To assist the OTS and the OCC in evaluating the magnitude of the proposed rule, the OTS and the OCC specifically invite commenters to provide any data they may have on the costs and benefits of the proposed rule with regard to real estate lending operations at bank organizations, the impact on loan documentation, monitoring and processing time, possible reduction in losses on real estate lending, and the availability of credit.

#### Paperwork Reduction Act

The collection of information contained in Alternative 1 of the proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

If Alternative 1 of the proposed rule becomes final, insured depository institutions will be required to establish written maximum internal loan-to-value ratio lending limits for certain types of real estate loans within or below a permissible supervisory range. Each institution will be required to specify in writing the criteria it will use to qualify loans at loan-to-value ratio ranges up to its established loan-to-value ratio limits.

The annual reporting burden for the collection of information from insured depository institutions is estimated as follows:

Estimated number of recordkeepers:	
National banks (OCC) ..	3,750.
State member banks (Board).	985.
State nonmember banks (FDIC).	7,550.
Savings associations (OTS).	2,200.
Estimated average burden per recordkeeper..	20 hrs.
Estimated total annual recordkeeping burden:	
OCC .....	75,000 hours.
Board .....	19,700 hours.
FDIC .....	151,000 hours.
OTS .....	44,000 hours.

No burden is estimated for Alternative 2 of the proposed rule since no new or additional collection of information are mandated beyond those already required.

Comments concerning the accuracy of this estimate and suggestions on reducing the burden should be sent to Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503; and to the appropriate agency, as follows:

OCC: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219.

Board: Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Assistant Executive Secretary (Administration), room F-453, Federal Deposit Insurance Corporation, Washington, DC 20429.

OTS: Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

#### List of Subjects

##### 12 CFR Part 34

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

##### 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 365

Banks, banking, Credit, Mortgages, Real estate appraisals, Real estate lending standards, Savings associations.

##### 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

#### Authority and Issuance

Office of the Comptroller of the Currency

##### 12 CFR Chapter I

For the reasons set out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

#### PART 34—[AMENDED]

1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j-3; 12 U.S.C. 1828(o); 12 U.S.C. 3331 *et seq.*

2. For Alternative 1, a new "Subpart D—Real Estate Lending Standards" is proposed to be added to part 34 to read as follows:

#### Subpart D—Real Estate Lending Standards

Sec.

34.61 Purpose and scope.

34.62 Definitions.

34.63 Real estate lending loan-to-value restrictions.

#### Subpart D—Real Estate Lending Standards

##### § 34.61 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes ranges of maximum permissible loan-to-value ratios to be used by insured national banks in establishing their own internal loan-to-value ratios of real estate loans subject to this subpart.

##### § 34.62 Definitions.

For the purposes of this subpart:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the

same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the OCC's appraisal regulations (12 CFR part 34, subpart C) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in 12 CFR part 3, appendix A.

(n) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 34.63 of this subpart.

#### § 34.63 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this subpart are satisfied.

(b) *Loan-to-value ratios.* (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset

quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine the institution's compliance with this subpart.

(6) An extension of credit subject to this subpart, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this subpart.

(7) Subject to the other provisions of this subpart, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not

exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the OCC.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the institution's internal loan-to-value ratio limits established pursuant to this subpart, provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 3 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, a new "Subpart D-Real Estate Lending Standards" is proposed to be added to Part 34 to read as follows:

#### Subpart D—Real Estate Lending Standards

Sec.

34.61 Purpose and scope.

34.62 Definitions.

34.63 Real estate lending loan-to-value restrictions.

#### Subpart D—Real Estate Lending Standards

##### § 34.61 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes maximum loan-to-value ratios applicable to real estate lending by insured national banks.

##### § 34.62 Definitions.

For the purposes of this subpart:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property or real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific

date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the OCC's appraisal regulations (12 CFR part 34, subpart C) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *financially-responsible guarantor* means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(j) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or  
 (5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in 12 CFR Part 3, Appendix A.

(o) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 34.63 of this subpart.

#### § 34.63 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this subpart are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an

established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the OCC;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the OCC; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 3 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of

collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated: June 26, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

#### Federal Reserve System

##### 12 CFR Chapter II

For the reasons set out in the preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

#### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

**Authority:** Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 461–466, 601, and 611, respectively); sections 4, 13(j), and 18(o) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1823(o), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 781(b), 781(g), 781(i), 780–4(c)(5), 78q, 78q–1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

2. For Alternative 1, a new "Subpart C—Real Estate Lending" comprising §§ 208.50 through 208.51 is proposed to be added to part 208, as proposed to be amended at 57 FR 29238, July 1, 1992, to read as follows:

##### Subpart C—Real Estate Lending

Sec.

208.50 Definitions.

208.51 Real estate lending loan-to-value restrictions.

##### Subpart C—Real Estate Lending

#### § 208.50 Definitions.

For the purposes of this subpart:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value* or *evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Federal Reserve's appraisal regulations, subpart G to part 225 of this chapter, and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land

and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *Raw Land Loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *Pre-Construction Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *Construction and Land Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term *Improved Property Loan* means an extension of credit secured by one of the following types of real property:

- (1) Farmland committed to ongoing agricultural production;
- (2) Non-owner-occupied 1-to-4 family residential property;
- (3) Multifamily residential property;
- (4) Completed commercial property; or
- (5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term *1-to-4 Family Residential Property Loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

- (1) A construction loan to a prospective owner-occupant who has obtained prequalified permanent financing; and
- (2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 208.

(n) The term *Home Equity Loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 208.51(b) of this part.

#### § 208.51 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this section for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine compliance with this section.

(6) An extension of credit subject to this section, together with any senior liens on or interests in the real property

securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this section.

(7) Subject to the other provisions of this section, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For Raw Land Loans, the maximum permissible loan-to-value ratio shall not exceed 50 to 65 percent of the appraised value or evaluation;

(ii) For Pre-Construction Development Loans, the maximum permissible loan-to-value ratio shall not exceed 55 to 70 percent of the appraised value or evaluation;

(iii) For Construction and Land Development Loans, the maximum permissible loan-to-value ratio shall not exceed 65 to 80 percent of the appraised value or evaluation;

(iv) For Improved Property Loans, the maximum permissible loan-to-value ratio shall not exceed 65 to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 Family Residential Property Loans, the maximum permissible loan-to-value ratio shall not exceed 80 to 95 percent of the appraised value or evaluation;

(vi) For Home Equity Loans, the maximum permissible loan-to-value ratio shall not exceed 80 to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 Family Residential Property Loans and Home Equity Loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the Board.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the institution's internal loan-to-value ratio limits established pursuant to this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 208, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of

this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, a new "Subpart C—Real Estate Lending" comprising §§ 208.50 through 208.51 is proposed to be added to part 208, as proposed to be amended at 57 FR 29238, July 1, 1992, to read as follows:

#### Subpart C—Real Estate Lending

Sec.

208.50 Definitions.

208.51 Real estate lending loan-to-value restrictions.

#### Subpart C—Real Estate Lending

##### § 208.50 Definitions.

For purposes of this subpart:

(a) *Loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) *Real property or real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) *Extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) *Credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) *Loan origination* means the time of inception of an extension of credit.

(f) *Appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Federal Reserve's appraisal regulations, subpart G to part 225 of this chapter, and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) *Financially-responsible guarantor* means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) *Multifamily residential property* means residential property containing five or more individual dwelling units.

(j) *Raw Land Loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) *Pre-Construction Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) *Construction and Land Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) *Improved Property Loan* means an extension of credit secured by one of the following types of real property:

- (1) Farmland committed to ongoing agricultural production;
- (2) Non-owner-occupied 1-to-4 family residential property;
- (3) Multifamily residential property;
- (4) Completed commercial property; or
- (5) Other income-producing property that has been completed and is available for occupancy and use.

(n) *1-to-4 Family Residential Property Loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

- (1) A construction loan to a prospective owner-occupant who has obtained prequalified permanent financing; and
- (2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 208.

(o) The term *Home Equity Loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 208.51(b) of this part.

#### § 208.51 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not

exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

- (1) For a Raw Land Loan, 60 percent of the appraised value or evaluation;
- (2) For a Pre-Construction Development Loan, 65 percent of the appraised value or evaluation;
- (3) For a Construction and Land Development Loan, 75 percent of the appraised value or evaluation if it involves a project that:
  - (i) Will be at least 65 percent owner-occupied;
  - (ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;
  - (iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;
  - (iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;
  - (v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or
  - (vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);
- (4) For all other Construction and Land Development Loans, 65 percent of the appraised value or evaluation;
- (5) For an Improved Property Loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;
- (6) For an Improved Property Loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;
- (7) For a 1-to-4 Family Residential Property Loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the Board;
- (8) For a 1-to-4 Family Residential Property Loan without private mortgage insurance, 80 percent of the appraised value or evaluation;
- (9) For a Home Equity Loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the Board;
- (10) For a Home Equity Loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 208, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s) without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

#### PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818(b), 1828(o), 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, 3331–3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)).

2. Concluding text is added at the end of paragraph (b)(1) of § 225.25 to read as follows:

#### § 225.25 List of permissible nonbanking activities.

• • • • •  
(b)(1) • • •

All loans or other extensions of credit made or acquired by a bank holding company or any non-bank subsidiary thereof, if secured by real property or made for the purpose of financing

permanent improvements to real property, must conform to the Real Estate Lending Loan-To-Value Restrictions set forth in § 208.51 of the Board's Regulation H; 12 CFR part 208.

Dated: June 26, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board of Governors of the Federal Reserve System.

#### Federal Deposit Insurance Corporation 12 CFR Chapter III

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend 12 CFR chapter III, subchapter B as set forth below:

1. For Alternative 1, part 365 is proposed to be added to read as follows:

#### PART 365—REAL ESTATE LENDING STANDARDS

Sec.

365.1 Purpose and scope.

365.2 Definitions.

365.3 Real estate lending loan-to-value restrictions.

Authority: 12 U.S.C. 1828(o).

##### § 365.1 Purpose and scope.

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes ranges of maximum permissible loan-to-value ratios to be used by insured state banks that are not members of the Federal Reserve System in establishing their own internal loan-to-value ratios for real estate loans subject to this part.

##### § 365.2 Definitions.

For purposes of this part:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights,

light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the FDIC's appraisal regulations (12 CFR part 323) and guidance; and

(2) Reflects a market value that—  
(i) For development and construction lending generally, includes the value of anticipated improvements;

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of

structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) *Improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Appendix A to part 325 of this chapter.

(n) *Home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) *Nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 365.3 of this part.

##### § 365.3 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this part are satisfied.

(b) *Loan-to-value ratios.* (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory

range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine the institution's compliance with this part.

(6) An extension of credit subject to this part, together with any senior liens on or interests in the real property securing or being improved by such credit; must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this part.

(7) Subject to the other provisions of this part, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the FDIC.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the institution's internal loan-to-value ratio limits established pursuant to this part, provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 325 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

2. For Alternative 2, Part 365 is proposed to be added to read as follows:

## **PART 365—REAL ESTATE LENDING STANDARDS**

Sec.

365.1 Purpose and scope.

365.2 Definitions.

365.3 Real estate lending loan-to-value restrictions.

Authority: 12 U.S.C. 1828(o).

### **§ 365.1 Purpose and scope.**

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes maximum loan-to-value ratios applicable to real estate lending by insured state banks that are not members of the Federal Reserve System.

### **§ 365.2 Definitions.**

For purposes of this part:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the

same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the FDIC's appraisal regulations (12 CFR part 323) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements;

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *financially-responsible guarantor* means a guarantor who has both the financial capacity and the willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(j) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term *construction and land development loan* means an extension of credit, whether or not secured by real

property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Appendix A to part 325 of this chapter.

(o) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 365.3 of this part.

#### § 365.3 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this part are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this part, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the

appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the FDIC;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the FDIC; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 325 of this chapter, and further provided that such

nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated at Washington, DC, this 23rd day of June, 1992.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,  
Executive Secretary.

#### Office of Thrift Supervision

#### 12 CFR Chapter V

For the reasons set forth in the preamble, The Office of Thrift Supervision hereby proposes to amend part 563, subchapter D, chapter V, title 12 of the Code of Federal Regulations, as follows:

#### PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468; 12 U.S.C. 1817, 1828; 12 U.S.C. 3806; 42 U.S.C. 4106; Sec. 304, Pub. L. 102-242, 105 Stat. 2236.

2. For Alternative 1, new §§ 563.100, 563.101, and 563.102 are proposed to be added to subpart D of part 563 to read as follows:

#### § 563.100 Real estate lending standards; purpose and scope.

This section, and §§ 563.101 and 563.102 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe ranges of maximum permissible loan-to-value ratios to be used by savings

associations and their subsidiaries in establishing their own internal loan-to-value ratios for real estate loans subject to these sections.

#### § 563.101 Real estate lending standards; definitions.

For the purposes of this section and §§ 563.100 and 563.102 of this subpart:

(a) *Loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) *Real property or real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) *Extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) *Credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) *Loan origination* means the time of inception of an extension of credit.

(f) *Appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Office of Thrift Supervision's appraisal

regulations (12 CFR part 564) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in part 567 of this chapter.

(n) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 563.102 of this subpart.

**§ 563.102 Real estate lending; loan-to-value restrictions.**

(a) *General rule.* A savings association shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* (1) Each savings association shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, a savings association may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the savings association's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each savings association shall specify in writing the criteria used by the association to qualify loans at loan-to-value ratio levels up to the association's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, a savings association shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) A savings association's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the association's board of

directors as being consistent with the safe and sound operation of the association. These standards shall be subject to examiner review in order to determine the association's compliance with this section.

(6) An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the savings association under this section.

(7) Subject to the other provisions of this section, each savings association shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the OTS.

(c) *Permissible nonconforming real estate loans.* A savings association may make real estate loans that do not conform to the association's internal loan-to-value ratio limits established pursuant to this section, provided that

the aggregate amount of all such real estate loans does not exceed 15 percent of the association's total capital, as defined in part 567 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the association's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the savings association, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, new §§ 563.100, 563.101, and 563.102 are proposed to be added to subpart D of part 563 to read as follows:

**§ 563.100 Real estate lending standards; purpose and scope.**

This section, and §§ 563.101 and 563.102 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe maximum loan-to-value ratios applicable to real estate lending by savings associations and their subsidiaries.

**§ 563.101 Real estate lending standards; definitions.**

For the purposes of this section and §§ 563.100 and 563.102 of this subpart:

(a) *The term loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the

extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value* or *evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Office of Thrift Supervision's appraisal regulations (12 CFR part 564) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *financially-responsible guarantor* means a guarantor who has both the financial capacity and

willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(j) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in part 567 of this chapter.

(o) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to

real property, that does not satisfy the terms and limitations of § 563.102 of this subpart.

#### § 563.102 Real estate lending loan-to-value restrictions.

(a) *General rule.* A savings association shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 95 percent of the

appraised value or evaluation with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the OTS;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the OTS; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* A savings association may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of

this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the association's total capital, as defined in part 567 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the association's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the savings association, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated: June 29, 1992.

By the Office of Thrift Supervision,

Timothy Ryan,

Director.

[FR Doc. 92-16069 Filed 7-15-92; 8:45 am]

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# **Register**

# **Federal**

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**Thursday**  
**July 16, 1992**

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## **PART VI**

### **Department of Education**

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**Research in Education of Individuals with  
Disabilities Program; Notice of Final  
Priorities and Notice Inviting Applications  
for New Awards**

## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services

## Research in Education of Individuals With Disabilities Program; Final Funding Priorities for FY 1992 and 1993

**AGENCY:** Department of Education.

**ACTION:** Notice of final priorities for fiscal years 1992 and 1993 for Research in Education of Individuals with Disabilities Program.

**SUMMARY:** The Secretary announces final funding priorities for fiscal years (FYs) 1992 and 1993 for the Research in Education of Individuals with Disabilities Program. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1992 and 1993.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3095, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 732-1099. Deaf and hard of hearing individuals may call (202) 732-6153 for TDD services.

**SUPPLEMENTARY INFORMATION:** The Research in Education of Individuals with Disabilities Program, authorized by part E of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1441-1443), provides support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn; and research and related purposes, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement

called for by the National Education Goals.

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications under one of these competitions is published in a separate notice in this issue of the Federal Register.

On January 28, 1992, the Secretary published a notice of proposed priorities for this program in the Federal Register (57 FR 3250-3257).

## Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, twenty-one parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

## Comments on Priority 1—Initial Career Awards

**Comment:** One commenter encouraged the inclusion of psychoeducational assessments and intervention services, and the integration of services such as physical therapy, occupational therapy, speech therapy, etc., with educational programs as specific topics of interest under the priority.

**Discussion:** As written, the priority supports projects to conduct research and related activities consistent with the purpose of the program as stated in the program regulations at 34 CFR 324.1. The purpose of the program is stated very broadly and includes support to (1) advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments, to provide children with disabilities effective instruction and enable them to learn successfully; and (2) research and related activities, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities. The Secretary concurs that the activities recommended by the commenter are important, and believes that they are included under the rubric of the broad purpose statements, and that to specify only those activities proposed by the commenter would be overly prescriptive.

**Changes:** None.

## Comments on Priority 2—Research on Self-Determination in Individuals With Disabilities

**Comment:** One commenter recommended that (1) funding recognize the divergent needs of varying disability populations, particularly students with mental retardation and learning disabilities; (2) projects extend and augment the self-determination projects funded through the Secondary Education and Transition Services Branch; and (3) projects include the involvement of individuals with disabilities as well as their families.

**Discussion:** The priority, as written, recognizes the divergent needs of varying disability populations, and requires projects, in identifying the individual variables of self-determination, to be sensitive to individual characteristics affecting self-determination such as age, level of functioning, cultural differences, and nature of disability. Because self-determination has been identified as a goal by individuals with the full array of disabling conditions, including individuals with cognitive deficits, the Secretary believes that it should be left to the applicant to delineate the subject characteristics in its study.

In response to the commenter's second recommendation, the priority, as written, requires collaboration with other projects to maximize project benefits. The Secretary prefers not to limit or prescribe which projects are worthy of collaboration.

With respect to the commenter's third recommendation, the Secretary notes that the priority, as written, requires the participation of individuals with disabilities and parents of individuals with disabilities in project activities (e.g., in developing the conceptual framework and in identifying the individual variables of self-determination).

**Changes:** None.

**Comment:** One commenter stated that concepts such as self-determination are personal and subjective and heavily influenced by culture. The commenter recommended that in attempting to provide educators with a vehicle for defining and measuring self-determination as an explicit educational goal, the cultural background and language experience of a people must be validated.

**Discussion:** The Secretary believes that this concern is addressed in the development of the approach and its subsequent field testing. As written, the priority requires projects to be sensitive to individual characteristics affecting

self-determination, such as age, level of functioning, cultural differences, and nature of disability, and further requires projects to sample the domains of school, home, work, and community.

*Changes:* None.

#### Comments on Priority 3—Including Children With Disabilities as a Part of Systemic Efforts To Restructure Schools

*Comment:* One commenter recommended that the priority specifically state the school restructuring, whether at the State, district, or building level, must have the ultimate goal of ensuring that students with disabilities be fully included in all aspects of school life, including education provided in supported, heterogeneous, age-appropriate, regular classrooms with students who do not have disabilities, as well as in all other curricular and extra-curricular programs and activities of the school.

*Discussion:* The purpose of the priority is to develop and implement systemic changes at the school level required to incorporate effective practices for children with disabilities into broader school-based educational reform and restructuring initiatives. In the "Activities" section of the priority, projects are required to "specify the diverse educational outcomes that the school is committed to achieving for all children (emphasis added), including children with disabilities." Also, an inclusionary orientation is reflected in the requirement under "Project Planning" that states that the reform and restructuring activities must reflect principles for effecting systemic change as well as systemic features that facilitate the participation and achieve better educational outcomes for children with disabilities. The Secretary believes that the priority, as written, provides for the inclusion of children with disabilities in all aspects of school life.

*Changes:* None.

*Comment:* One commenter recommended that the priority (1) encourage applicants to address the needs of children with disabilities who are included in restructured environments within inner city schools; (2) support and encourage research that will lead to the design of effective support systems to ensure success for students with disabilities in restructured environments; (3) permit a wide range of use of funds to provide supports such as personnel, consultation, technology, assistive devices, inservice training, travel, university collaboration, program development, and dissemination of results; (4) support funding for parent education, travel, purchase of reference materials, and childcare, in an effort to

maximize opportunities for full parental participation; and (5) support active student involvement in the projects.

*Discussion:* The purpose of this priority is to support model projects, not research projects, that develop and implement systemic change at the school level. With the exception of research, the priority allows for an applicant to propose and justify the types of activities recommended by the commenter. The Secretary believes that the specific uses of funds and their justification should be left to the applicant. The potential benefits of those uses will be weighed in the review of applications.

*Changes:* None.

*Comment:* One commenter stated that system change should not result in the placement of all children with learning disabilities in regular classrooms because the nature of the disability in an individual child may be such that the child cannot learn appropriately in that setting.

*Discussion:* The Secretary concurs, and does not believe that the priority, as written, requires such an approach. Projects are broad based reflecting systemic change and would not govern individual cases.

*Changes:* None.

#### Comments on Priority 4—Ombudsperson Services for Children and Youth With Disabilities

*Comment:* Sixteen commenters expressed concern over the list of potential ombudspersons listed in the priority, and interpreted the priority to exclude advocates other than parent advocates. In general, the commenters felt the priority reflected a misunderstanding and negative bias towards "advocacy", and two commenters recommended that "advocacy case management" be specified as part of the concept for ombudspersons services.

*Discussion:* The Secretary agrees with the commenters that there are other groups from which knowledgeable and objective potential ombudspersons could be identified. The Secretary also agrees that impartial advocacy activities (i.e., activities that are objective, do not support any vested interests, and only want what is in the best interests of the child) should be allowable under this priority. Advocacy case management is only one of many approaches that can be used by an ombudsperson in helping to identify and resolve problems. The Secretary believes that it would be inappropriate to emphasize that approach over others that may be used. The priority, as written, was attempting to emphasize a mediational approach as

opposed to the more formal, adversarial approaches.

*Changes:* The priority has been changed by adding to the list of potential ombudspersons the statutory language that includes persons with similar qualifications designated by the Secretary as potential ombudspersons. In addition, the language in the priority stating that ombudspersons do not perform individual advocacy has been deleted.

*Comment:* One commenter felt that the types of organizations eligible to apply needed to be identified.

*Discussion:* The eligible applicants for the Research in Education of Individuals with Disabilities Program remain the same for all priorities announced under the program. Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

*Changes:* None.

*Comment:* Three commenters raised concerns related to potential conflicts of interest. One commenter noted that the groups from which potential ombudspersons could be identified included special education personnel and social workers. The commenter questioned how special education personnel, or even social workers, could operate externally or impartially, or avoid susceptibility to system influence. The second commenter was concerned with a perceived supervision of the ombudsperson by school district staff. The third commenter stated that the priority failed to address an implied conflict of interest, and recommended that an ombudsperson should not be an employee or contractor with any State or local school system.

*Discussion:* The Secretary agrees with the commenter that the ombudsperson must function independently and objectively, and that any supervision cannot compromise the ombudsperson's independence or objectivity. It is the responsibility of potential applicants to provide supporting evidence and justification for their choices. One of the key features of the design is that the selected ombudspersons not have a personal stake in the actions, decisions, or policies being investigated—that they have not directly participated in these actions, decisions, or policies. Finally, the priority provides that selected individuals may not be employees of a governmental entity that directly or indirectly provides services for students with disabilities or their families.

*Changes:* The role of the ombudsperson has been clarified to emphasize his or her objectivity and

ability to function independently and objectively.

*Comment:* Seven commenters expressed concerns relating to the role of ombudspersons, the scope of their services, and the potential for confusion and delay with due process under the Individuals with Disabilities Education Act. Specific recommendations included (1) adding an enforcement component or making it clear that ombudspersons can appear before agencies that enforce the law or regulations, if appropriate; (2) making appropriate referrals to "relevant agencies" (e.g., the Legal Services Corporation and Protection and Advocacy Systems); and (3) soliciting letters of commitment from the Legal Services Corporation and Protection and Advocacy Systems.

*Discussion:* The purpose of these demonstration projects is to test the efficiency and efficacy of the ombudsperson approach, not to substitute for, preclude, or delay other due process systems already in place. With regard to the ombudsperson's ability to appear before agencies that enforce the laws or regulations, that ability should be clarified. The Secretary notes that the last two recommendations are already addressed by the priority in that it requires the ombudsperson to make timely referrals to "relevant agencies", and to solicit letters of commitment from "relevant agencies". The Secretary believes it would not be possible to list all relevant agencies, and believes it is the responsibility of potential applicants to provide supporting evidence and justification for their choices.

*Changes:* The priority has been clarified to include language stating that the ombudsperson is able to appear before agencies that enforce the laws or regulations.

*Comment:* One commenter recommended community involvement in the development of the ombudsperson demonstration program.

*Discussion:* The Secretary concurs that community involvement should be included in the development of the program.

*Changes:* The "Program Design and Development" section of the priority has been clarified to include community participation.

*Comment:* One commenter recommended that funding should be targeted to those States or regions where there is a higher than average number of complaints or concerns expressed by families, and to those places where there are barriers due to poverty, ethnicity, language, lack of geographical access and other reasons.

*Discussion:* The Secretary believes that the activities required in the "Site Description" section of the priority are responsive to the commenters' concerns. Projects are reviewed on the basis of evaluation criteria that allow applicants to address the importance and impact of their project. The Secretary does not believe it is necessary to "target" funds.

*Changes:* None.

*Comment:* One commenter recommended that (1) the "Technical Soundness" selection criterion be revised to include coordination with other service providers of advocacy case management services, including Protection and Advocacy Systems; and (2) the "Quality of Key Personnel" and the "Organizational Capability" selection criteria be revised to require consideration of qualifications to engage in alternative dispute resolution, knowledge of administrative and legal remedies, and knowledge of advocacy case management services.

*Discussion:* The "Technical Soundness" selection criterion lists coordination with other service providers, but does not prescribe the types of other service providers. The "Quality of Key Personnel" selection criterion considers experience and training of key personnel in fields related to the objectives of the project and other evidence that the applicant provides. The "Organizational Capability" selection criterion considers the applicant's experience in special education or early intervention services. Given the potential diversity among projects, the Secretary believes that it is the responsibility of the applicant to provide the necessary information on the types of providers and the reasons for their selection, and the Secretary prefers not to prescribe specific qualifications for personnel or organizations. The expert panel of reviewers will review applications for service provider information, personnel and organizational qualifications, and it is the responsibility of the applicant to provide supporting information and justification for all three criteria.

*Changes:* None.

#### General Comments

*Comment:* One commenter requested that an additional priority relating to the assistive technology needs of children with significant speech and motor challenges be added.

*Discussion:* The Secretary believes that a priority that focuses on assistive technology would be more appropriately announced and funded by the Technology, Educational Media, and Materials for Individuals with Disabilities Program. The Secretary

notes that there are currently two competitions announced under the Technology, Educational Media, and Materials Program that provide applicants an opportunity to submit proposals related to assistive technology.

*Changes:* None.

#### Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only applications that meet one of these priorities:

##### Priority 1—Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a doctoral program and graduated no earlier than the 1987-1988 academic year for fiscal year 1992 awards. For fiscal year 1993 awards, individuals must have completed a doctoral program and graduated no earlier than the 1988-1989 academic year. Applicants are encouraged to recruit individuals who are members of racial or ethnic minority groups. This priority supports projects to conduct research and related activities focusing on early intervention services and special education consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to represent all inquiry related to the particular theory or conceptual framework. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution of the line of inquiry will substantially improve early intervention services and special education. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to conducting the

proposed research. These experts do not have to be at the same institution or agency as the applicant. This interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. However, the experts' involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers, and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project procedures, findings, and conclusions must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

*Priority 2—Research on Self-Determination in Individuals With Disabilities (CFDA 84.023J)*

**Issue**

Individuals with disabilities have identified self-determination, self-efficacy, self-advocacy, and maximum independence as major goals for the disability movement. These goals emphasize the need for individuals with disabilities to learn to make choices, set goals regarding their lives and the services they receive, and to initiate actions to achieve those goals. The ability of individuals to make choices may also be an important component in being perceived by others as independent and self-determining.

Self-determination has also been described as including one or more of the following: Goal setting, social interaction, communication, assertiveness, decision making, and self-advocacy. These behaviors (as well as others yet to be identified) and groups of behaviors overlap, making distinctions difficult. Comprehensive conceptual frameworks representing alternative perspectives are needed to advance the assessment of current school practices in relation to the development of self-determined behavior. There is a need to identify the relationships and influences of the major sub-components of self-determination in order to provide a stronger conceptual base on which to develop improved assessment. Procedures for defining, identifying, and

validating assessment approaches need advancement.

**Background**

The value of participation in society by individuals with disabilities has prompted professionals and advocates to provide them with previously unavailable opportunities to participate in normalized environments and integrated community settings. While legislation, litigation, and publicly supported programs have promoted the inclusion of individuals with disabilities into the mainstream, many of the barriers to successful inclusion remain beyond the remedy of legislatures, courts, and professional advocacy. An increasing consensus by individuals with disabilities is that full inclusion will require the individual to overcome the stereotypes of disability. These stereotypes are viewed as promoting passive acceptance, learned helplessness, and political inaction. The keys to change are programs, parents, and education or rehabilitation professionals that emphasize independence as more than the performance of basic social and vocational skills. The development of individuality, self-esteem, goal oriented behavior, assertive behavior, and decision making ability are also critical outcomes.

The development of self-determined behavior and attitudes in students with disabilities has been hampered by lack of a definition of self-determination, limited models of programs or methodologies for achieving self-determination, limited expectations of parents and professionals, and emphasis on the development of services as opposed to the development of the individual. Although all of these factors have impeded the development of self-determination in students, none is more critical than the development of valid and operational definitions of self-determination. It is essential to develop approaches for assessing its level in order to include it as a component in program design and service delivery.

**Purpose**

The purpose of this priority is to support projects to provide an operational definition for self-determination and assessment approaches for determining the level of self-determination. The assessment approaches must also provide methodologies for improving the operational definition of self-determination.

Project activities must also develop a better understanding of self-

determination as an outcome of schooling. The nature and scope of traditional outcome measurement must be broadened to assess the degree to which individuals with disabilities set goals and initiate and sustain actions to achieve those goals. It is anticipated that the development of a validated assessment of self-determination will provide for a better balance between societal and individual outcomes as well as provide educators a vehicle for defining and measuring self-determination as an explicit educational goal. Finally, project activities will result in a conceptual model and tool for assessing a program's contribution to developing self-determining behaviors and attitudes of individuals with disabilities.

**Activities**

Projects must (1) develop a conceptual framework of self-determination; (2) identify the individual characteristics and behaviors of self-determination; (3) develop, validate, and field test an assessment approach for operationally defining and measuring self-determination; (4) collaborate with other projects to maximize project benefits; and (5) disseminate project findings to individuals with disabilities and professionals involved in service delivery planning or evaluation.

*Develop a Conceptual Framework*

Several activities are required in developing a conceptual framework of the constructs of self-determination. Information must be gathered from multiple sources and methodologies to produce a conceptual framework that is comprehensive, sensitive to individual differences, and can provide the framework for the project. Sources must include (1) professional research and theoretical literature from education, rehabilitation, and other relevant disciplines; (2) interviews with individuals with disabilities exhibiting self-determination; and (3) interviews with service providers and researchers. Projects must analyze this information and develop a conceptual framework comprised of the constructs identified as a result of these activities. The conceptual framework must identify hypothesized relationships that may be correlated with identified variables of self-determination. After the conceptual framework has been developed, each project must convene a panel consisting of individuals with disabilities, parents of individuals with disabilities, instructional personnel, and other persons providing services in the area of disabilities. These panels must provide

input as to the validity of the conceptual framework in delineating the diverse concept of self-determination.

#### *Identify the Individual Variables of Self-Determination*

Once the conceptual framework has been developed, the projects must develop procedures for identifying the variables for each construct. These variables will serve as the basis for the development of an assessment approach to provide information regarding the individual characteristics relevant to self-determination. The approach may represent self-determination as developmental in nature or as demonstrated at particular points in time. From a developmental perspective self-determination might include the progressive stages of skills, attitudes, and knowledge representing identified constructs. These stages may be grade referenced (e.g., K-3, 4-6, etc.) or age referenced. For the latter approach, the individual's level of self-determination would be considered at a particular point in time for a specific purpose (e.g., choosing a roommate). The level could be determined by observation or a rating provided by an individual familiar with the individual's abilities and limitations. Regardless of the approach, the variables must be sensitive to individual characteristics affecting self-determination such as age, level of functioning, cultural differences, and nature of disability; and sample the domains of school, home, work, and community. The development of the assessment approach must include the active participation of the above-mentioned panel of individuals with disabilities in the identification and validation of variables associated with self-determined behavior. The participation of professionals (advocates, researchers, teachers, etc.) and parents must be included so as to ensure both the acceptance and usability of the assessment approach.

#### *Validate and Field Test Assessment Approach*

Projects must develop, validate, and field test an assessment approach to self-determination. An assessment approach must include the identification, definition, measurement, and validation of key constructs related to self-determination. The assessment approach must include a rationale and activities required to operationally define and measure self-determination. Projects must employ methodologies for deriving the self-determination variables that are consistent with the development of an assessment approach

that will be sensitive to a range of individual student abilities, backgrounds, and situations. Field testing must provide a clear indication of the utility of the approach in school settings. The assessment approach must produce descriptions of student behaviors and characteristics that are useful in designing instructional units for the development of self-determination.

First, projects must pilot the assessment with individuals with disabilities. The pilot must include individuals representative of the age, functioning level, and environments of its intended consumers. The pilot must guide the revision of the approach prior to a full scale field test.

Following the pilot procedures, a larger scale field test of the assessment must be conducted. The sample for this activity must be large enough to allow the determination of the technical adequacy of the assessment, including reliability and validity.

#### *Collaboration Activities*

Projects must budget for a meeting to establish a collaborative relationship with other projects funded under this priority. This meeting serves as a forum for refining the self-determination variables proposed by each project and arranging a process for the exchange of project information and materials. It is anticipated that the collaboration activities will enhance conceptualization of self-determination by incorporating varying perspectives and methods of validation.

#### *Dissemination*

Projects must disseminate the project's findings and products, and provide opportunities for input by groups regarding the educational and programmatic implications of the findings of the projects and the continued refinement of the concept of self-determination. Input must be sought, at a minimum, from representatives of the following groups: individuals with disabilities, parents of students with disabilities, professionals involved in instruction and planning for individuals with disabilities, and other individuals relevant at a given stage of the individual with disabilities life (e.g., residential providers, rehabilitation counselors, employers, etc.).

#### *Additional Federal Requirements*

Projects must budget to attend the annual Project Directors' meeting to be held in Washington, D.C.

#### *Priority 3—Including Children with Disabilities as a Part of Systemic Efforts to Restructure Schools (CFDA 84.023R)*

##### *Issue*

Educational reform and restructuring initiatives intended to improve the educational outcomes of our Nation's children must be designed to accommodate the diverse characteristics and learning needs of children with disabilities. Educational reform and restructuring activities are stimulating changes in schools across the Nation. Restructuring represents systemic efforts to alter the policy, organizational, and belief frameworks of administrators, teachers, parents, and students to improve the learning and educational outcomes of students. The nature and focus of restructuring varies from school to school. Restructuring may occur on a State, district or building level. It may include site-based management approaches which emphasize the decentralization of control and decision making. In some schools, site-based management is being implemented in conjunction with modifications in curricular approaches, instructional patterns, and assessment. Current experimentation with providing parents and their children with greater "choice in education" represents, in some cases, another example of restructuring.

##### *Background*

The Division of Innovation and Development, Office of Special Education Programs (DID/OSEP), has focused previously upon identifying and implementing specific educational interventions and strategies in classrooms and schools. Since 1985, DID/OSEP has invested systematically in a program of research and development to improve the instruction, curricula, classroom management, and assessment of children with disabilities who are being educated in general classroom environments. Eight research competitions, comprising 41 projects, have been conducted in the past five years. These projects, however, have not addressed the question of how innovations that achieve meaningful participation and better results for children with disabilities in general school environments can become part of broader efforts to systematically restructure schools.

These projects provide direction, define practices, and chart implementation requirements for adopting specific innovations. Predominantly, these funded projects

have relied on external researchers rather than administrators and teachers to stimulate and support ongoing implementation of school innovation. These externally oriented models have not focused on the basic systemic changes required to incorporate these effective practices into broader system-wide, school-based educational reform and restructuring initiatives.

Innovations must be incorporated into the complex organizational system of the school. The processes required for generating innovations, developing effective applications, and determining implementation requirements are different from those needed to achieve broader systemic change in order to implement innovations. Too often, innovation activities have been supported, and dissemination activities encouraged, but little attention has been provided to the developmental stages and levels of implementation support required to achieve effective adoption of innovations.

#### Purpose

This priority supports projects to develop and implement systemic changes at the school level required to incorporate effective practices for children with disabilities into broader school-based educational reform and restructuring initiatives. Projects must identify the critical policy, organizational, administrative and operating features for transforming schools into learning organizations and systems that are capable of continually monitoring their activities and performance in order to achieve better educational outcomes for children with disabilities. Systemic variables must be identified and addressed. These include, for example, continuity of services for individual students (e.g., communication between multiple service providers), linkages among systems, fluidity of a system for facilitating movement of services and individuals between components (e.g., so that services can be provided regardless of setting), and preparedness of a system for effectively meeting the diverse characteristics that students present to schools. These features embody the dynamic, generative thinking and creative experimentation of organizations. These projects must identify essential systemic design features, specifications, and choices for schools engaged in educational reform and restructuring necessary for achieving better education outcomes for all children, including those with disabilities.

Educational outcomes must be broadly stated and must be valued by society for children with disabilities.

The attainment of an educational outcome must reflect more than an incremental change in performance and be an accomplishment generally valued by society. Illustrations of such outcomes might include personal adjustment, social or communicative competence, productivity, physical or motoric achievements, quantitative thinking, reasoning, and achievements in the visual and performing arts.

Projects must (a) establish basic orienting premises to guide the systemic design for school sites to meet the needs of children with disabilities in the context of addressing the diverse conditions and complex learning needs of all children; (b) specify broad educational outcomes that are valued by society and reflect accumulated learning and accomplishments in diverse areas; (c) identify systemic design features required for all children including those with disabilities to achieve these educational outcomes; (d) develop a multi-year plan for effecting systemic changes; and (e) conduct case studies on the change processes, effects, and impact of implementing these systemic changes.

#### Activities

**Site Selection.** Projects must occur in schools that already are planning for or engaged in some substantive or procedural restructuring initiative. An individual school must demonstrate a commitment to both systemic changes as well as adoption of effective professional practices that will address the diversity and complexity of learning needs of children with disabilities. Projects must indicate the systemic changes and activities that funds from this grant will support in relation to their ongoing restructuring initiative. Schools must already have a number of children with disabilities integrated into regular classroom activities. Children with disabilities must represent a range in types of disability as well as severity.

**Project Planning.** An initial planning phase of up to one year is anticipated. Extensive efforts must be made during this time to involve faculty, parents, individuals with disabilities, regular and special education research experts, other community agencies, innovative practitioners, and others as appropriate. The plan must include systemic planning, change, and feedback activities that develop and maintain ongoing school administrative and faculty commitment to implementing their reform and restructuring initiatives. The reform and restructuring activities must reflect principles for effecting systemic change as well as systemic features that facilitate the participation

and achieve better educational outcomes for children with disabilities. Initial planning activities must include the following:

(1) *Clarification and specification of the premises, goals, and outcomes of the project in relation to the school's current or planned reform and restructuring initiatives.* The project must refine its initial statements of basic orienting premises to guide the project. Goals of the project must specify systemic features, action required, and aim. Projects must specify the diverse educational outcomes that the school is committed to achieving for all children, including those with disabilities. Each site must demonstrate that the school's educational outcomes will reflect a diversity of areas and levels of potential accomplishment for children with disabilities.

(2) *Specification of the ongoing planning processes, procedures, and participants needed to govern, design, implement, and assess the project.* The project must develop and implement an operational plan that includes a planning process and procedures that provide for the participation of a substantial number or proportion of general education and special education teachers in the school, building and district administrators, school board representatives, support staff, parents, individuals with disabilities, community agency representatives, and regular and special education researchers. The operational plan must reflect the project's vision of the school as a system achieving its goals in conjunction with the school district and the community (e.g., regional health, mental, social, and correctional agencies; voluntary organizations; businesses; institutions of higher education; and families). Ongoing planning procedures must be related to: project premises, goals, systemic targets for change, systemic design features, systemic change, feedback on project progress, and evaluation of project effects and impact.

(3) *Refine operational plan and schedule of activities to be undertaken in order to achieve project goals.* This plan of operation must address, but is not limited to, the following restructuring activities: planning, organizational development, clarification of project basic orienting premises, project goals, specification of educational outcomes, system design activities, systemic change and project evaluation. For each of these restructuring activities the project must develop objectives, establish timelines, identify resources needed, identify barriers to be overcome, assign

responsibilities for these activities, and establish performance measures to determine progress and problems related to implementation of each activity. The plan of operation must give particular attention to the dynamic nature of systemic change as the plan develops and progresses through levels of implementation.

(4) *Procedures to determine the effectiveness and impact of the project.* Procedures must include assessing all project activities, the effectiveness and impact of systemic design features, and the extent of attainment of project goals. Each project must develop and conduct rigorously designed evaluation activities that document or validate project findings, and provide new insights related to the varied aspects of designing and implementing systemic change.

*Implement and Evaluate Project Plans.* Projects must implement their operational plan and schedule of activities in a manner to achieve their goals within a 48-month period. It is expected that activities will be phased in over the four years of the project. Project progress, effectiveness, and impact must be assessed consistently with the design and measures developed and refined during the planning and implementation phases of the project.

*Collaboration.* Projects must budget for one meeting per year with other grantees from this competition, as well as for funds to attend the annual meeting of project directors for the Division of Innovation and Development. Projects must collaborate with other projects from the competition on an ongoing basis to determine joint products and activities that would be useful to other schools considering or engaged in educational reform and restructuring initiatives.

*Dissemination.* Projects must disseminate information about the project on an ongoing basis to other schools in their area, State, or region. Projects must also develop plans to disseminate findings of the project. Project dissemination must focus on basic orienting premises, systemic design features and their effectiveness and impact, and implications for school-based reform and restructuring initiatives in a form usable by such audiences as teachers and administrators.

*Priority 4—Ombudsperson Services for Children and Youth with Disabilities (CFDA 84.023M)*

#### Issue

The determination of the appropriateness of an educational

program for students with disabilities is often a complex and emotional process involving students with disabilities, their parents, and an increasing number of professionals. It is not surprising that in some instances the process breaks down due to an inability to communicate and resolve issues; barriers consisting of lack of access, availability or appropriateness of services; or a host of other systemic reasons.

Currently, several State and local educational agencies have enacted mediation programs as part of the administrative remedy requirement under due process requirements. Although reactive mediation services may help to prevent formal due process reviews, they begin only after a conflict has arisen. Reactive programs tend to focus on individual problem resolution, often adding little to resolving or preventing underlying systemic issues.

Ombudsperson services represent the ability to proactively identify systemic problems and to initiate actions to prevent or lessen the impact on individuals with disabilities and their families. This priority would require that the ombudsperson identify the various key integrating systems in their community or region. These integrating entities would serve to refer individuals or identify recurrent problems that relate to individuals with disabilities and their families. This type of proactive impartial mediation would enable the ombudsperson to identify and solve systemic problems and issues.

#### Background

A variety of regulatory and organizational factors have often resulted in the service delivery system for individuals with disabilities lacking the capacity to be fully responsive to the needs of these individuals. One approach for addressing this unresponsiveness has been the ombudsperson model. This model was developed in Scandinavian countries and refers to individuals, often employed by a government entity such as the legislature, who assist citizens by investigating complaints against the government. For the purposes of this priority, an ombudsperson refers to any individual who acts as a liaison, to assist in and mediate interactions with a service system.

Ombudspersons operate independently, thereby avoiding apparent conflict of interest, partiality, or other susceptibility to system influence. Consistent with this concept, the role of the ombudsperson must be performed by persons who are objective, function independently, and who maintain a problem-solving

mediational position. They participate in a variety of activities designed to "personalize" a service system by making it more responsive to individuals. Ombudspersons are not responsible for enforcing laws or regulations, but are intended to secure fairness in the government's interactions with citizens. They have no legal authority to enforce a decision or force action on the part of any party. However, they may exercise great systemic pressure by identifying service inequities and inadequacies and bringing these to the public's attention. Ombudspersons' power is that of impartiality, mediation, and social pressure derived, frequently, by focusing attention on a problem. While they are not considered responsible for solving problems between citizens and government, they can make recommendations to appropriate policy making entities.

#### Purpose

The purpose of this priority is to support and assess projects that will provide ombudsperson services to assist in resolving problems that are systemic barriers to appropriate educational, related services, or other services for children and youth with disabilities. Assistance is to be provided to children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve systemic problems in a timely manner. Participation in this ombudsperson program does not preclude or delay due process under Part B of IDEA.

Specific objectives of the projects are to (a) design an ombudsperson program within a local, regional, or State system; (b) develop and complete all preparation necessary to fully implement the ombudsperson program; (c) determine the feasibility of the ombudsperson role, function, and procedures; and (d) fully implement and evaluate the impact of the ombudsperson program for resolving problems that are related to the delivery of special education and related services, and mediating systemic conflicts involving students with disabilities and their families. This priority will be implemented in two phases.

#### Phases and Activities

*Phase 1.* This phase will support from five to seven projects for up to eighteen months to design, develop, and prepare for full implementation, and assess the feasibility of an ombudsperson program at the local, regional, or State level.

Each project must provide letters of commitment from relevant agencies, including schools, to participate in the Phase 1 design and development, and the Phase 2 full implementation and evaluation activities.

Projects must focus on designing proactive systems oriented strategies. In this approach, an ombudsperson serves as a catalyst for change on a system, agency, or institutional level. By focusing on a proactive approach, the ombudsperson program must anticipate and prevent problems in service delivery by identifying problem antecedents and consequences. The contributions of this program include identifying, defining, and resolving systemic issues related to the responsiveness and appropriateness of the service system to address the needs of students with disabilities. For example, the initial response to the identification of a systemic problem would be the clarification and communication of the problem to the affected parties. In many cases, this may be sufficient to make resolution or additional options possible. If this is unsuccessful, the ombudsperson may attempt to provide linkages between the interested parties, provide additional support, appear before agencies that enforce the law or regulations, or provide technical assistance. If this is ineffective, the ombudsperson may work with a State level representative, whose primary responsibilities are complaint management. Finally, the ombudsperson could work with the State Advisory Committee established under Part B of the IDEA, local interagency coordination councils, local and State Developmental Disabilities Councils, and Governor's councils or commissions on disability issues.

**Phase 1 Activities—Site Description.** During Phase 1, projects must prepare an indepth description of the project. These descriptions must include (a) the current organizational framework for the unit with which the ombudsperson will work (e.g., school, local educational agency, intermediate educational unit); (b) an overview of currently available services for students with disabilities in addition to those provided by the schools; (c) a description of current formal and informal patterns of interaction of the school with other service providers; (d) measures of consumer satisfaction with current services; and (e) other information that documents the current system improvement needs of the schools and their potential for pursuing innovative approaches to address those needs.

Each project must also identify the levels (local, regional, or State) for which the program will be fully implemented. The level selected must be appropriate for establishing an effective relationship with the organizational structure of current or potential service providers for children and youth with disabilities and their families (e.g., schools, social service providers, juvenile justice systems). Project sites must be selected where the fiscal and administrative experience would support the Phase 2 full implementation of the ombudsperson innovative program.

**Program Design and Development.** The ombudsperson service must not replace or replicate existing advocacy services or informational programs currently provided for under the Developmental Disabilities Act or provided by professional or parent organizations or associations. Under no circumstances should the activities of these projects alter access to redress under the due process requirements of the IDEA.

Each project's design must include a detailed process by which the ombudsperson roles, functions, and procedures will be defined and developed within the community and the current service system. The process must include the participation of the community and other potential service providers for children and youth with disabilities and their families in addition to the school system (e.g., mental health, social services, child welfare, court system, and juvenile correction providers).

Each project must identify and develop strategies to address the potential barriers and issues for implementing ombudsperson services. In addition, each project must design and develop strategies for how ombudsperson services will be made available and known to consumers and training ombudspersons. Projects must describe the process and procedures for gaining acceptance of the various service providers, including schools and parents, for the role, function, and procedures of the ombudsperson. Further, the design must include a procedure by which the activities of the ombudsperson may be supervised and the program held accountable.

This might entail direct reporting to State department level officials via a public annual report or some other method for monitoring the program activities.

Potential ombudspersons must be identified from the following groups: parent advocates, social workers,

special education personnel, psychologists, and persons with similar qualifications designated by the Secretary. Selected individuals may not be employees of a governmental entity that directly or indirectly provides services for students with disabilities or their families. Consistent with the concept of ombudsperson services, this role must be performed by persons who function independently and who maintain an objective, problem solving mediational position. Each project must identify individuals who (a) are independent of the existing system of service delivery; (b) possess or will be trained in problem solving skills, mediational skills, and systemic change processes; and (c) are knowledgeable of issues related to the provision of an appropriate education program for students with disabilities, including issues related to the coordination and collaboration of services external to the school system.

Phase 1 activities must include obtaining information on available services, and current service eligibility requirements. This information must be made accessible and available to children and youth with disabilities and their families.

These ombudsperson services must be integrated within the prior scheme of service delivery so that they may be continued following the period of the award. Each project must provide evidence of support for obtaining resources following the Phase 1 funding period.

**Determining Feasibility of the Ombudsperson Program Design.** In Phase 1, each project must develop and implement procedures for (a) assessing the feasibility of the design and implementation requirements of the ombudsperson role, function, and procedures at the level (local, regional, or State) of the project; (b) determining the potential for the ombudsperson program to proactively resolve systemic improvement issues that are related to the delivery of special education and related services; and (c) determining the likelihood that they can successfully complete Phase 2 activities. Criteria for determining the feasibility of the program must include, but are not limited to policy, fiscal, administrative, procedural, personnel, attitudes, and participant support for ombudsperson services; and must include quantitative as well as qualitative methods such as simulation, case studies, or piloting of program features.

**Collaboration.** The Department has substantial interest in these projects being able to collectively contribute to

advancing an understanding of the design features and implementation issues and solutions to developing ombudsperson services. All projects must collaborate with each other and with the Department to (a) synthesize their individual designs for ombudsperson roles, functions, and procedures; (b) identify issues, barriers, and solutions to fully implement the ombudsperson services; and (c) describe their feasibility findings for fully implementing ombudsperson services. Projects must budget three trips to Washington, D.C. for the purpose of developing a cross-project dissemination product.

#### Phase 2

This phase will provide continued support for between two to three projects from Phase 1 for an additional two years. The purpose of this phase is to fully implement and evaluate the effectiveness of ombudsperson services for proactively resolving systemic problems related to the delivery of special education and related services.

Phase 2 projects will be selected based on (a) the potential that the different project designs offer for contributing to the understanding of ombudsperson roles, functions, and procedures; (b) the increase in understanding of the implementation requirements for differing contexts; (c) evidence gathered during Phase 1 regarding the feasibility of ombudsperson designs and full implementation for proactively identifying systemic issues and responding to needs for system improvements; and (d) the ability of projects to obtain funding from local, regional, or State sources to continue activities following the Phase 2 funding period.

**Phase 2 Activities—Procedures for Assuring the Integrity of Implementation.** Each project selected for Phase 2 must have a schedule for full implementation of ombudsperson services. This schedule must reflect a sequence and progression of activities consistent with the extensive literature on achieving the full implementation and change associated with adoption of innovations. Critical commitments and participation for fully implementing ombudsperson services must be obtained. Procedures for assuring the integrity of implementation must be operative. The full implementation of the ombudsperson program must be achieved, and the documentation maintained that describes the participation of relevant parties as well as the process and stages of change.

**Evaluating Ombudsperson Services.** Projects must rigorously test the overall

effectiveness of ombudsperson services. Key program designs and overall features must also be documented so that others interested in utilizing these designs and features could evaluate their applicability and potential for implementation in their school district and community.

The evaluation process must be multi-dimensional using quantitative and qualitative information to provide a detailed account of the project from a service provider's perspective, consumer's perspective, parent's perspective, and policy maker's perspective.

The evaluation plan must assess the effectiveness of proactive systems oriented ombudsperson services as a means for identifying and addressing needed systemic improvement, and for enhancing the responsiveness and appropriateness of services to meet the needs of children with disabilities.

**Collaboration.** The Department has substantial interest in projects awarded under this priority. This interest includes capturing across projects the effectiveness of solutions to the full range, nature, and context of implementation requirements for providing ombudsperson services. Projects must collaborate with each other and with the Department in designing their Phase 2 activities to permit cross-project summary of findings and lessons learned. Projects must also cooperate with the Department in working with coalitions of professional and parent organizations to develop cross-project dissemination materials for their respective membership.

**Project Dissemination.** Dissemination of project information is a significant aspect of Phase 2 activities. Each project must plan to disseminate information through existing professional and parent organizations, technical assistance providers, and other relevant information providers that disseminate to local, State, and national levels. These dissemination activities must also be incorporated with the project design to facilitate public awareness on the local and regional level.

Project Directors must plan to attend the two-day Project Directors' meeting to be held in Washington, D.C. each year of the project. In addition, two meetings will be scheduled with all Phase 2 projects prior to the end of their award period for the purpose of developing a cross-project dissemination product. These meetings will last for two days and be held in Washington, DC

#### Selection Criteria

The following selection criteria will be used to evaluate applications for projects submitted under this priority. The maximum score for all of the criteria is 100 points.

##### (a) *Innovativeness.* (10 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides innovative design features in developing ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families.

(b) *Importance and impact.* (10 points)  
The Secretary reviews each application to determine—

(1) The extent to which the focus of ombudsperson services addressed by the proposed project is of significance to others in the Nation;

(2) The importance of the project in addressing the problem or issue; and

(3) The probable impact of ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families (e.g., evidence of responsiveness and appropriateness of services, reduced legal costs, or reduced tension or conflict between schools and families).

##### (c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and

(v) An effective performance measurement system for assessing project progress and implementation.

##### (d) *Technical soundness.* (20 points)

(1) The Secretary reviews each application to determine the procedural and methodological soundness of the plan for the development, and feasibility of full implementation of the project with respect to such matters as—

- (i) The design and development process;
  - (ii) Procedures for establishing the integrity of project activity implementation in Phases 1 and 2;
  - (iii) Coordination with other service providers;
  - (iv) The design and measurement of Phase 1 system feasibility for resolving service delivery and systemic problems;
  - (v) The proposed site sample; and
  - (vi) The data analysis procedures for determining Phase 1 feasibility.
- (e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

- (i) The qualifications of the project director (if one is to be used);
- (ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(f) *Organizational capability.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

- (i) The facilities that the applicant plans to use are adequate;

- (ii) The equipment and supplies that the applicant plans to use are adequate;

- (iii) The applicant's experience in special education or early intervention services;

- (iv) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively; and

- (v) The strength of commitment to fully implement ombudsperson services.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

- (i) The budget for the project is adequate to support the project activities; and

- (ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation of ombudsperson services.* (15 points)

(1) The Secretary reviews each application to determine the quality of the Phase 2 evaluation plan.

(2) The Secretary looks for—

- (i) Rigor of evaluation design and measurement for addressing implementation requirements and barriers;

- (ii) Rigor of evaluation design and measurement for studying effectiveness of key features of ombudsperson services;

- (iii) Analysis procedures for determining overall ombudsperson service effectiveness; and

- (iv) Rigor of evaluation design and measurement for determining impact of ombudsperson services as a proactive systems oriented approach.

Applicable Program Regulations: 34 CFR part 324.

**Program Authority:** 20 U.S.C. 1441-1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: June 9, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-16856 Filed 7-15-92; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.023M]

### Research in Education of Individuals with Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

**Purpose of Program:** To assist research and related activities, and to conduct research, surveys, or demonstrations, relating to the

education of and early intervention services for infants, toddlers, children, and youth with disabilities.

**Eligible Applicants:** Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

**Deadline for Transmittal of Applications:** August 21, 1992.

**Applications Available:** July 16, 1992.

**Available Funds:** \$700,000.

**Estimated Average Size of Awards:** \$100,000 for 18 months.

**Estimated Number of Awards:** 7.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** up to 48 months (includes both Phase 1 and Phase 2).

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324, as amended on October 22, 1991, at 56 FR 54686-54706.

**Priority:** The notice of final priority for the Ombudsperson Services for Children and Youth with Disabilities, published elsewhere in this issue of the *Federal Register*.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the National Education Goals.

**For Applications or Information**

**Contact:** Linda Glidewell, U.S.

Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer

Building, Washington, DC 20202-2640.

Telephone: (202) 732-1099. Deaf and

hard of hearing individuals may call

(202) 732-6153.

**Program Authority:** 20 U.S.C. 1441-1443.

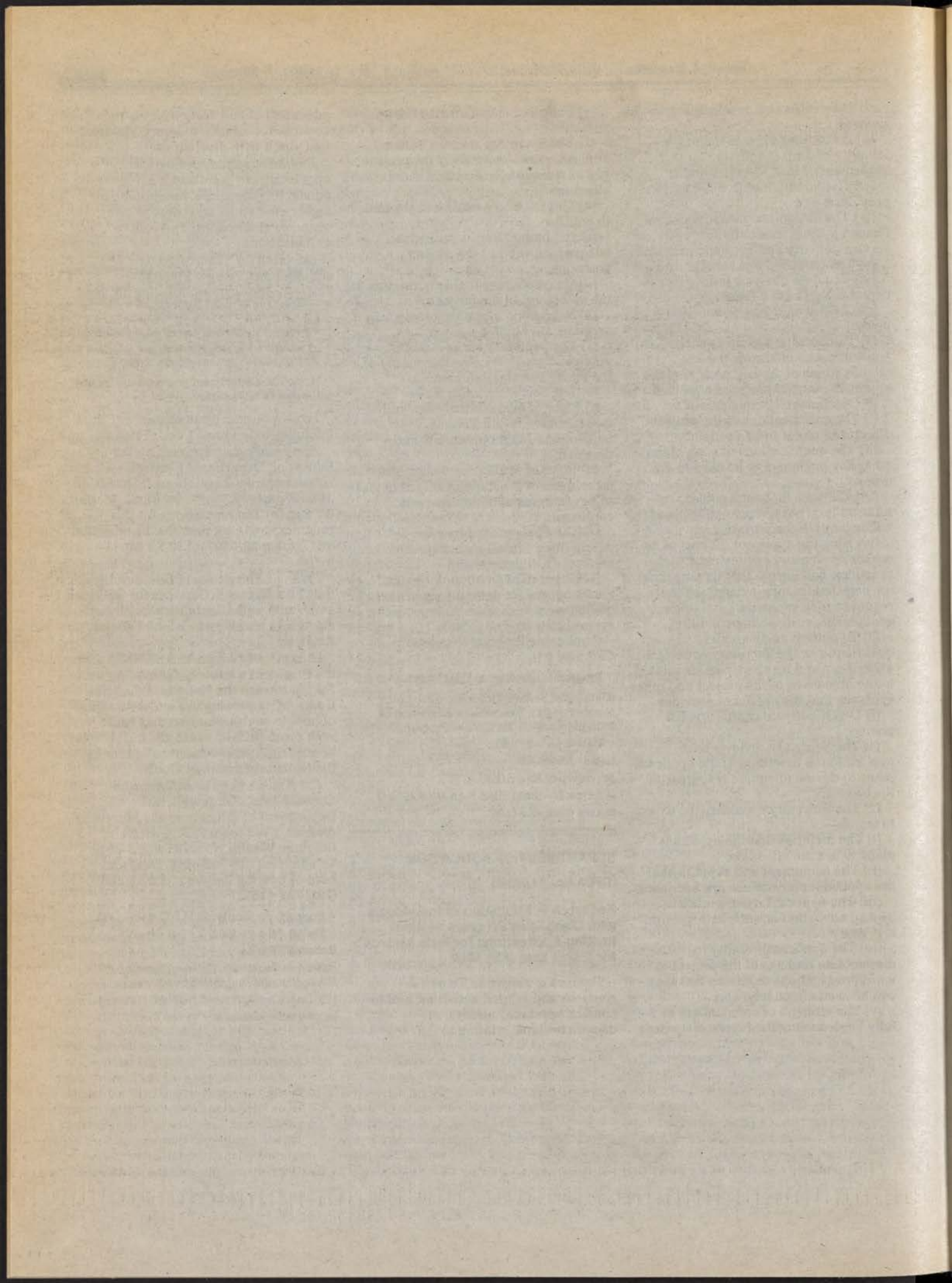
Dated: July 10, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-16855 Filed 7-15-92; 8:45 am]

BILLING CODE 4000-01-M



# **federal register**

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**Thursday  
July 16, 1992**

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**Part VII**

## **The President**

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**Proclamation 6457—Giant Sequoia in  
National Forests**

July 15, 1943

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The President

President Franklin D. Roosevelt  
White House, Washington, D. C.

Report on the  
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## Presidential Documents

Title 3—

Proclamation 6457 of July 14, 1992

The President

### Giant Sequoia in National Forests

By the President of the United States of America

#### A Proclamation

For centuries, groves of the Giant Sequoia have stimulated the interest and wonder of those who behold them. The Giant Sequoia is a tree that inspires emotion like no other and has mystically entered the hearts of humanity everywhere. Ancestors of Giant Sequoia trees have existed on Earth for more than 20 million years. Naturally occurring old-growth Giant Sequoia groves located in the Sequoia, Sierra, and Tahoe National Forests in California are unique national treasures that are being managed for biodiversity, perpetuation of the species, public inspiration, and spiritual, aesthetic, recreational, ecological, and scientific value.

This Nation's Giant Sequoia groves are legacies that deserve special attention and protection for future generations. It is my hope that these natural gifts will continue to provide aesthetic value and inspiration for our children, grandchildren, and generations yet to come.

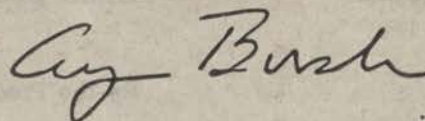
So as to promote greater appreciation and awareness of our Giant Sequoia groves, such groves in the Sequoia, Sierra, and Tahoe National Forests should continue to be managed by the Secretary of Agriculture as unique objects of beauty and antiquity for the benefit and inspiration of all people.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim that naturally occurring old-growth Giant Sequoia groves within the Sequoia, Sierra, and Tahoe National Forests in the State of California shall be managed, protected, and restored by the Secretary of Agriculture, acting through the Forest Service, to assure the perpetuation of the groves for the benefit and enjoyment of present and future generations. The Secretary of Agriculture is directed to delineate the location of such Giant Sequoia groves, as set forth in the Sequoia National Forest Mediated Settlement Agreement, and subsequently to provide the Secretary of the Interior with a list of the designated groves and with a description of the boundaries of each of the groves. The Secretary of the Interior is hereby directed, to the maximum extent permitted by law, to segregate immediately and subsequently to withdraw the designated groves from all forms of location and entry under the general mining laws, and from any disposition under the mineral and geothermal leasing laws and laws pertaining to the disposal of mineral material, subject to valid existing rights.

The designated Giant Sequoia groves shall not be managed for timber production and shall not be included in the land base used to establish the allowable sale quantities for the affected national forests. The designated Giant Sequoia groves shall be protected as natural areas with minimal development. Consistent with the best scientific information available, the Secretary of Agriculture shall assure that any proposed development shall provide for aesthetic, recreational, ecological, and scientific value. Notwithstanding the foregoing, the Converse Basin Grove shall be managed as set forth in the Sequoia National Forest Mediated Settlement Agreement.

This proclamation is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this 14 day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-17012

Filed 7-15-92; 11:44 am]

Billing code 3195-01-M

**Editorial note:** For the President's remarks on signing this proclamation, see issue 29 of the *Weekly Compilation of Presidential Documents*.

# Reader Aids

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Thursday, July 16, 1992

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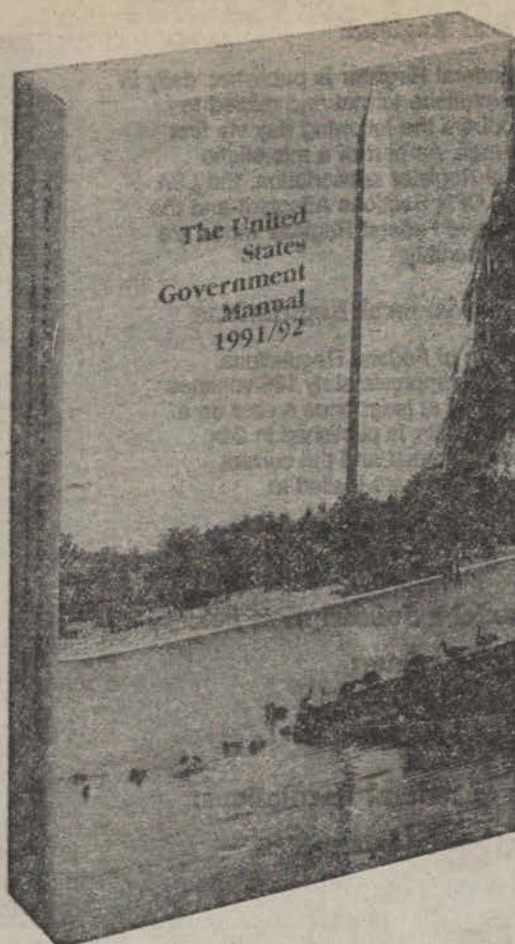
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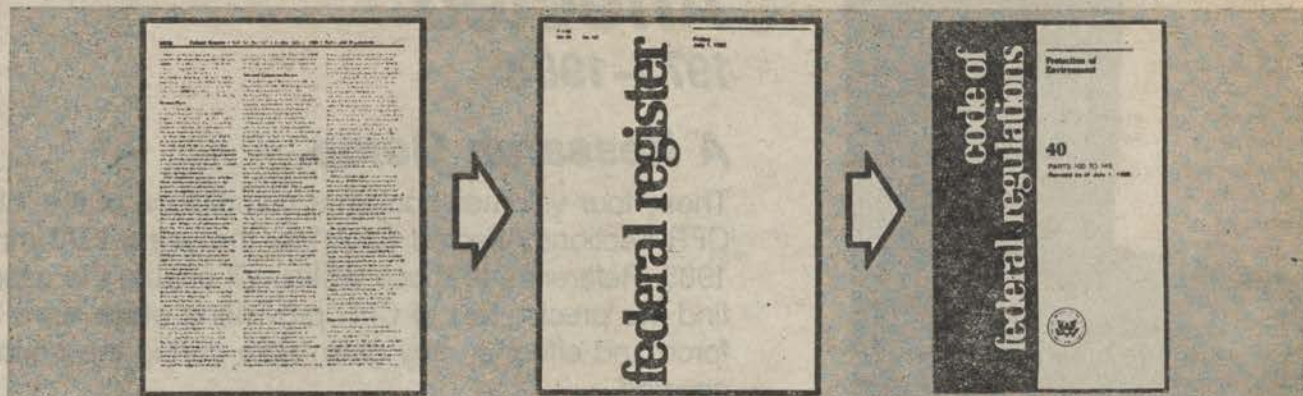
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